



INTERIOR BOARD OF INDIAN APPEALS

Gus H. Gardner v. Rocky Mountain Regional Director, Bureau of Indian Affairs

41 IBIA 89 (06/06/2005)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
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ARLINGTON, VA 22203

GUS H. GARDNER,	:	Order Docketing and
Appellant,	:	Dismissing Appeal
	:	
v.	:	
	:	
ROCKY MOUNTAIN REGIONAL	:	Docket No. IBIA 05-69-A
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee.	:	June 6, 2005

Appellant Gus H. Gardner seeks review of a March 9, 2005, decision of the Rocky Mountain Regional Director, Bureau of Indian Affairs (Regional Director), upholding a decision by the Crow Agency Superintendent to approve an agricultural lease to Murraymere Farms/Rob Kern on Crow Allotment No. 2151. The Board docketed the appeal, but dismisses it as untimely.

Appellant, through his counsel, received the Regional Director's decision on March 12, 2005, as shown on a copy of the certified mail receipt card. Appellant's notice of appeal was filed with the Board on April 15, 2005, as evidenced by the postmark. See 43 C.F.R. § 4.310(a). Appellant's counsel noted in a cover letter that the appeal had first been mailed on April 5, 2005, but to an outdated address. After being returned by the postal service, the appeal was mailed on April 15 to the Board at its correct address.

A notice of appeal must be filed with the Board within 30 days after an appellant receives the decision from which the appeal is taken. 43 C.F.R. § 4.332(a). The 30-day time period is jurisdictional. Id.

The Regional Director's March 9, 2005, decision correctly advised Appellant's counsel of the Board's current address. Appellant did not mail the appeal to the correct address until after the 30-day time period had expired. When an appellant has been provided with correct appeal instructions, but mails the appeal to an incorrect address, and the appeal is filed with the Board outside the 30-day time period, it must be dismissed for lack of jurisdiction. See Grider v. Eastern Oklahoma Regional Director, 40 IBIA 139, 140 (2004), and cases cited therein.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board docketed this appeal, but dismisses it for lack of jurisdiction.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Anita Vogt
Senior Administrative Judge