



INTERIOR BOARD OF INDIAN APPEALS

Lorrayne S. Wick and Robert C. Wick v. Midwest Regional Director, Bureau of Indian
Affairs

44 IBIA 20 (11/14/2006)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ARLINGTON, VA 22203

LORRAYNE S. WICK and ROBERT C. WICK,	:	Order Docketing and Dismissing
Appellants,	:	Appeal
	:	
v.	:	Docket No. IBIA 07-36-A
	:	
MIDWEST REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee.	:	November 14, 2006

On November 6, 2006, the Board of Indian Appeals (Board) received a notice of appeal from Lorrayne S. Wick and Robert C. Wick (Appellants), pro se. Appellants' original notice of appeal was forwarded to the Board by the Midwest Regional Office, Bureau of Indian Affairs (Regional Office; BIA), where it had been filed. Appellants seek review of a July 24, 2006 decision of the Midwest Regional Director, BIA (Regional Director), affirming the Great Lakes Agency Superintendent's decision to deny Appellant Lorrayne Wick's request to convey by gift deed a portion of her interest in Wagagiwash Allotment No. 366, located on the Lac du Flambeau reservation in Wisconsin. The Board docketed the appeal, but dismisses it for lack of jurisdiction because it is untimely.

The Regional Director's decision provided correct appeal instructions, including the 30-day time limit for filing an appeal with the Board and the Board's correct address. See 43 C.F.R. § 4.332(a). The Board's correct address is included on the top of Appellants' notice of appeal; however, the envelope in which the appeal was mailed was addressed to the Regional Office.

Appellants' notice of appeal was sent by BIA via FedEx delivery to the Board, which received it on November 6, 2006.

A notice of appeal from a decision of a BIA Regional Director must be filed with the Board within 30 days after receipt by the appellant of the decision from which the appeal is taken. 43 C.F.R. § 4.332(a). The 30-day deadline for filing a notice of appeal is jurisdictional. Id.; State of Kansas v. Southern Plains Regional Director, 43 IBIA 229, 230 (2006). The effective date for filing a notice of appeal with the Board is the date the notice of appeal is mailed or personally delivered to the Board. See 43 C.F.R. § 4.310(a)(1).

The Board has consistently held that a notice of appeal is not timely when the appellant has been given correct appeal information but files a notice of appeal with an official other than the Board, resulting in receipt of the notice of appeal by the Board outside the time period specified in the regulations. See, e.g., Wilkins v. Rocky Mountain Regional Director, 39 IBIA 21 (2003). An appellant who ignores explicit appeal instructions and files her notice of appeal in the wrong office bears the risks of delays in transmitting her notice of appeal to the Board. Id.

Because Appellants' notice of appeal was not filed with the Board within the 30-day appeal period, their appeal must be dismissed. 1/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from the Regional Director's July 24, 2006 decision is docketed but dismissed for lack of jurisdiction.

I concur:

 // original signed
Steven K. Linscheid
Chief Administrative Judge

 // original signed
Debora G. Luther
Administrative Judge

1/ We need not ascertain the precise date on which Appellants received the Regional Director's decision to determine that this appeal is untimely. Appellants mailed their notice of appeal to BIA on August 26, 2006 (as shown by the postmark on the envelope), which is more than 30 days before November 6, 2006, when the Board received the appeal. Therefore, even assuming that Appellants received the Regional Director's decision on the same day that they mailed their notice of appeal, the time for filing an appeal with the Board would have expired on September 25, 2006.