



INTERIOR BOARD OF INDIAN APPEALS

McCann Resources Inc. v. Acting Eastern Oklahoma Regional Director,
Bureau of Indian Affairs

50 IBIA 217 (09/17/2009)

Dismissing Petition for Reconsideration of:

48 IBIA 84



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

MCCANN RESOURCES INC.,)	Order Dismissing Petition for
Appellant,)	Reconsideration
)	
v.)	
)	Docket No. IBIA 07-031-1
ACTING EASTERN OKLAHOMA)	
REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	September 17, 2009

McCann Resources Inc. (MRI or Appellant) appealed to the Board of Indian Appeals (Board) from a September 12, 2006, decision (Decision) of the Acting Eastern Oklahoma Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director upheld a decision of the Superintendent, Osage Agency, BIA (Superintendent), determining that Gas Mining Lease No. 14-20-G06-3138 had terminated for lack of production. On November 3, 2008, the Board affirmed the decision as modified. *McCann Resources Inc. v. Acting Eastern Oklahoma Regional Director*, 48 IBIA 84 (2008).

On September 11, 2009, the Board received a letter dated September 1, 2009 (2009 Letter), and stamped by the U.S. Postal Service as mailed on September 3, 2009, from an attorney representing MRI. This letter was addressed to the Board at 1849 "C" Street, in Washington, D.C., and was forwarded to the Board's actual address in Arlington, Virginia. Attached to this letter, also received September 11, 2009, is a copy of Appellant's "Motion for Reconsideration," with a certificate of service indicating that copies were served on December 2, 2008, on five addresses, none including this Board's address. The Board has no record of receiving service of this Motion prior to September 11, 2009.

As grounds for the Motion for Reconsideration, MRI explains that it submitted a Reply Brief in 2007, of which the Board was assertedly unaware in its 2008 decision in *McCann Resources, Inc.* MRI explains that it was sent to the Department of the Interior at the "C" Street address in Washington, D.C. MRI believes that the problem is that it should have been sent to the Assistant Secretary – Indian Affairs at that same Washington, D.C., address. Motion at 1-2. Based on MRI's stated belief that a Reply Brief in an appeal before

this Board should be served on an Assistant Secretary, it acknowledges that the Reply Brief was “misdirected.”¹

All documents in an appeal are to be served on the Board. 43 C.F.R. § 4.320. Any petition for reconsideration was due to be filed *with this Board* “within 30 days from the date of the decision.” *Id.* § 4.315(a). All documents served on the Board are to be submitted at the address in Arlington, Virginia, plainly stated in the Department’s rules. *Id.* § 4.332(a). The proper address for a document served on the Board should come as no surprise to Appellant, because it is the same address printed on the heading of the decision issued to MRI in 2008 (and above). Any timely filed petition for reconsideration was due to be filed with this Board, at the address stated in the rules and on the heading of the decision, on or before December 3, 2008.

This Board did not receive a Reply Brief in 2007 or a Motion for Reconsideration in 2008, because, by admission of Appellant, MRI did not serve documents, due to be filed with the Board, on the Board itself. 43 C.F.R. §§ 4.320, 4.332. The 2009 Letter, with its attached Motion for Reconsideration, was plainly mailed to the wrong address and received by the Board long after the time for seeking reconsideration had elapsed.

The Board has no jurisdiction to consider a petition for reconsideration untimely filed. *Estate of Robert Henry Moran, Sr.*, 45 IBIA 26 (2007). Accordingly, we must dismiss petition for lack of jurisdiction.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, we dismiss the petition for reconsideration.

I concur:

// original signed
Lisa Hemmer
Administrative Judge*

// original signed
Debora G. Luther
Administrative Judge

*Interior Board of Land Appeals, sitting by designation.

¹ Although MRI purports to have attached a copy of its Reply Brief to its Motion for Reconsideration, no Reply Brief is attached to the documents received by the Board on September 11, 2009.