



INTERIOR BOARD OF INDIAN APPEALS

Chris Keane v. Northwest Regional Director, Bureau of Indian Affairs

51 IBIA 143 (02/22/2010)

Reconsideration denied:  
51 IBIA 235



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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|                     |   |                                       |
|---------------------|---|---------------------------------------|
| CHRIS KEANE,        | ) | Order Docketing and Dismissing Appeal |
| Appellant,          | ) |                                       |
|                     | ) |                                       |
| v.                  | ) |                                       |
|                     | ) | Docket No. IBIA 10-049                |
| NORTHWEST REGIONAL  | ) |                                       |
| DIRECTOR, BUREAU OF | ) |                                       |
| INDIAN AFFAIRS,     | ) |                                       |
| Appellee.           | ) | February 22, 2010                     |

Appellant Chris Keane appeals from a November 16, 2009, decision of the Northwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA), in which he affirmed BIA Puget Sound Agency Superintendent's June 16, 2009, decision to adjust the annual rent of Appellant's leased lot to \$9,000.<sup>1</sup> We docket this appeal, but dismiss it for lack of jurisdiction because it is untimely.

According to documents provided by the Regional Director's office, that office mailed the November 16 decision by certified mail to Appellant at his then address of record in La Conner, Washington. The Regional Director's decision contained accurate appeal instructions that specifically advised Appellant that a notice of appeal "must be mailed [to the Board] within 30 days of the date you receive this decision," provided Appellant with the Board's correct address, and informed him that "[n]o extension of time may be granted for filing [the] notice of appeal." Nov. 16 Decision at 6. The Postal Service records reflect that two notices were left for Appellant — on November 19 and November 24, 2009 — concerning the attempted delivery of mail containing the Regional Director's decision. Ultimately, the decision was delivered on November 24, 2009, after the second notice was left, and "Jim Keane" signed the certified delivery receipt. Appellant's notice of appeal is postmarked January 11, 2010.

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<sup>1</sup> Appellant leases Lot 31 of the Dr. Joe Waterfront Tracts, Division I (Lease No. 122 2086390328).

Appellant acknowledges in his notice of appeal that it is untimely. *See* Notice of Appeal at 2 (unnumbered) (“I am not in the 30 day time frame for [appealing.]”). He explains,

I Chris Keane moved out of State December 2<sup>nd</sup> 2009 for employment reasons. My mail has been forwarded to me by a family member. This decision for my appeal was delayed while I found housing and set up a PO Box. Between my mail being delayed due to moving out of state December 2<sup>nd</sup> [a]nd without an immediate forwarding address, leading right into the Christmas Holiday - I am rec[ei]ving [the Regional Director’s decision] on December 26, 2009.

*Id.* at 1 (unnumbered). We conclude that Appellant’s appeal is untimely and must be dismissed.

A notice of appeal from a decision of a BIA Regional Director 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 effective date for filing a notice of appeal with the Board is the date of mailing or the date of personal delivery, if not mailed. *Id.* § 4.310(a)(1). The 30-day deadline for filing a notice of appeal is jurisdictional. *Id.* § 4.332(a); *Wick v. Midwest Regional Director*, 44 IBIA 20 (2006); *Claymore v. Great Plains Regional Director*, 43 IBIA 274 (2006). Additional time cannot be granted for filing notices of appeal. 43 C.F.R. §§ 4.310(d)(1), 4.334; *Siemion v. Rocky Mountain Regional Director*, 48 IBIA 249, 257 (2009). Untimely appeals must be dismissed. 43 C.F.R. § 4.332(a); *Claymore*, 43 IBIA 274; *Saguaro Chevrolet, Inc. v. Western Regional Director*, 43 IBIA 85 (2006).

The Regional Director mailed his decision to Appellant at Appellant’s address of record. This mail was accepted by Jim Keane on November 24, 2009, before Appellant moved to Hawaii on December 2.<sup>2</sup> Therefore, Appellant had until December 24, 2009, to file his appeal with the Board, either by personally delivering his appeal to the Board by that date or by having his appeal postmarked by the Postal Service no later than December 24. If Appellant was in the process of moving while his appeal was pending before the Regional Director, it was his responsibility to make appropriate arrangements to receive mail sent to

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<sup>2</sup> This is not to say that the time for Appellant to appeal would have been tolled automatically if Appellant had moved to Hawaii prior to November 24. Rather, we merely observe that the Regional Director’s decision was delivered to Appellant’s address of record prior to the time he moved on December 2, and that Appellant concedes that he was still receiving mail at that address at the time of delivery.

his address of record until he was able to report a new address of record to BIA. *See* 25 C.F.R. § 2.14(a) & (c).<sup>3</sup>

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 November 16, 2009, decision is docketed but dismissed as untimely.

I concur:

          // original signed            
Debra G. Luther  
Administrative Judge

          // original signed            
Steven K. Linscheid  
Chief Administrative Judge

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<sup>3</sup> In his Notice of Appeal, Appellant indicates that “[i]t was not possible for me to respond in the time frame allocated.” Notice of Appeal at 2 (unnumbered). However, the preparation of a notice of appeal itself is not onerous. The Regional Director informed Appellant that his notice of appeal “should clearly identify the decision being appealed,” November 16 Decision at 6 (unnumbered), but did not require that he submit arguments in support of his appeal. *Cf.* 43 C.F.R. § 4.332(a) (a notice of appeal should include “a statement of the reasons for the appeal and of the relief sought”). Briefs on the merits of appeals before the Board are not due until after the Board docketed the appeal and receives the administrative record from BIA. *Id.* § 4.311(a).