



INTERIOR BOARD OF INDIAN APPEALS

Rosebud Sioux Tribe v. Acting Great Plains Regional Director, Bureau of Indian Affairs

52 IBIA 49 (08/12/2010)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ROSEBUD SIOUX TRIBE,)	Order Docketing and Dismissing
Appellant,)	Appeal
)	
v.)	
)	Docket No. IBIA 10-129
ACTING GREAT PLAINS REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	August 12, 2010

On July 28, 2010, the Board of Indian Appeals (Board) received a notice of appeal from the Rosebud Sioux Tribe (Tribe or Appellant), through its President, Rodney Bordeaux. The Tribe seeks review of a June 14, 2010, decision of the Acting Great Plains Regional Director, Bureau of Indian Affairs (Regional Director), which concluded that an earlier decision by the Regional Director, dated November 4, 2009, became final in the absence of a timely appeal filed by the Tribe.¹ Because the Tribe's appeal from the Regional Director's June 14, 2010, decision was filed more than 30 days after the Tribe received that decision, we docket and dismiss this appeal as untimely.

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 effective date of filing a notice of appeal with the Board is the date of mailing (if sent by U.S. mail) or the date of personal delivery (if not mailed). *Id.* § 4.310(a)(1). The 30-day deadline for filing an appeal is jurisdictional. *Id.* § 4.332(a). See *Keane v. Northwest Regional Director*, 51 IBIA 143, 144 (2010), and cases cited therein. Untimely appeals must be dismissed. *Id.*

¹ The Regional Director's November 4, 2009, decision vacated a decision by the Rosebud Agency Superintendent to cancel, for non-use, a homesite and business lease issued to the Lakota Bible Baptist Church and Alcohol & Drug Recovery Outreach Center of Saint Francis, South Dakota. The Regional Director found that the Superintendent had failed to provide the tenant with an opportunity to demonstrate why the lease should not be cancelled, and that the evidence submitted by the tenant on appeal to the Regional Director showed the tenant's continued use of the property.

The Regional Director's June 14, 2010, decision provided the Tribe with accurate instructions for filing an appeal with the Board, and it was sent to the Tribe by certified mail. The U.S. Postal Service's Track & Confirm website indicates that the Regional Director's letter was delivered to the Tribe on June 21, 2010. The Tribe's notice of appeal to the Board was filed on July 26, 2010, as evidenced by the postmark, which is more than 30 days after the Tribe received the Regional Director's decision. Because the appeal was filed after the 30-day deadline expired, we must dismiss it as untimely.

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 but dismisses this appeal for lack of jurisdiction.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debra G. Luther
Administrative Judge