



INTERIOR BOARD OF INDIAN APPEALS

Edward S. Danks, Jr. v. Great Plains Regional Director, Bureau of Indian Affairs

54 IBIA 154 (11/22/2011)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

EDWARD S. DANKS, JR.,)	Order Docketing and Dismissing
Appellant,)	Appeal
)	
v.)	
)	Docket No. IBIA 12-029
GREAT PLAINS REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	November 22, 2011

On November 1, 2011, the Board of Indian Appeals (Board) received a notice of appeal, which had been submitted by Edward S. Danks, Jr. (Appellant) to the Fort Berthold Agency Superintendent (Superintendent), Bureau of Indian Affairs (BIA), and which was forwarded to the Board by the BIA Great Plains Regional Director (Regional Director). Appellant seeks review of an August 26, 2011, decision of the Regional Director that adjusted the grazing rental rate to \$11.58 per Animal Unit Month for allotted lands on the Fort Berthold Reservation. The Board docketed this appeal, but dismisses it for lack of jurisdiction because it is 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 30-day deadline for filing a notice of appeal is jurisdictional. *Id.*; see *Keane v. Northwest Regional Director*, 51 IBIA 143, 144 (2010), and cases cited therein. Untimely appeals must be dismissed. 43 C.F.R. § 4.332(a); *Keane*, 51 IBIA at 144.

In his notice of appeal, Appellant states that he received the Regional Director’s decision on September 9, 2011, and therefore he had until October 11, 2011, to file his notice of appeal with the Board.¹ The Regional Director’s decision correctly advised

¹ The thirtieth day after Appellant states that he received the decision was a Sunday, which was immediately followed by a Federal holiday. When the last day for filing a document with the Board falls on a Saturday, Sunday, or holiday, the time period automatically is extended to the next business day, which in this case was Tuesday, October 11, 2011. See 43 C.F.R. § 4.310(c)(2).

Appellant of his appeal rights, the Board's current address, and the 30-day time limit for filing an appeal with the Board. However, Appellant did not file his notice of appeal with the Board, but instead with the Superintendent, who transmitted it to the Regional Director, who in turn forwarded it to the Board. The Board received the notice of appeal on November 1, 2011, well beyond the 30-day deadline for filing an appeal.

The Board has consistently held that a notice of appeal is untimely 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., Siemion v. Rocky Mountain Regional Director*, 48 IBIA 249, 256 (2009); *SiJohn v. Northwest Regional Director*, 46 IBIA 304, 305 (2008). An appellant who ignores explicit appeal instructions and files his notice of appeal in the wrong office bears the risks of delays in transmitting his notice of appeal to the Board. *Simeon*, 48 IBIA at 256.

Because Appellant's notice of appeal was filed with the Board after the 30-day appeal period expired, his appeal must be dismissed.

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 as untimely.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge