



INTERIOR BOARD OF INDIAN APPEALS

Earl and Linda Greening v. Acting Northwest Regional Director, Bureau of Indian Affairs

54 IBIA 188 (12/20/2011)



United States Department of the Interior

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

EARL AND LINDA GREENING,)	Order Docketing and Dismissing
Appellants,)	Appeal
)	
v.)	
)	Docket No. IBIA 12-031
ACTING NORTHWEST REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	December 20, 2011

Earl Greening and Linda Greening (Appellants) appealed to the Board of Indian Appeals (Board) from an August 24, 2011, decision of the Acting Northwest Regional Director (Regional Director), Bureau of Indian Affairs (BIA), that affirmed BIA’s Puget Sound Agency Acting Superintendent’s (Superintendent) July 26, 2010, decision to adjust the annual rent on Appellants’ Lease No. 122 2086850555 HS, covering Lot 27 of the Capet Zalsiluce Waterfront Home Sites on the Swinomish Reservation in Washington. 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 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). The 30-day deadline for filing an appeal is jurisdictional; untimely appeals must be dismissed. *Id.* § 4.332(a). The burden is on an appellant to show that its notice of appeal was timely filed with the Board. *Saguaro Chevrolet, Inc. v. Western Regional Director*, 43 IBIA 85, 85 (2006).

The Regional Director’s August 24, 2011, decision provided Appellants with accurate instructions for filing an appeal with the Board. It advised Appellants that any appeal “*must be mailed [to the Board] within 30 days of the date you receive this decision.*” Decision at 7. In their notice of appeal, Appellants state that they received the Regional Director’s decision on September 26, 2011, but did not open it until October 3, 2011.

See Notice of Appeal at 1.¹ Appellants' appeal was filed on October 28, 2011, as shown by the postmark on the envelope. See 43 C.F.R. § 4.310(a).

Appellants concede that they received the Regional Director's decision on September 26, 2011. Although Appellants may not have opened the letter from the Regional Director until October 3, the decision clearly advised them that it is the date of *receipt* — not the date that a party opens or reads previously received mail — that determines the deadline for filing a notice of appeal with the Board. Appellants had until October 26, 2011, to file their appeal with the Board, and they failed to do so. Appellants' suggestion that an extension is warranted because of their delay in opening their mail is irrelevant because the Board has no authority to extend the deadline for filing an appeal. See *id.* §§ 4.310(d)(1), 4.334; see also *Siemion v. Rocky Mountain Regional Director*, 48 IBIA 249, 257 (2009) (explaining that the time for filing a notice of appeal is jurisdictional and that the Board cannot waive the untimeliness of an appeal). Because Appellants filed their notice of appeal two days after the time to appeal had expired, their appeal is untimely and 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 for lack of jurisdiction.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

¹ The decision was first sent to Appellants by certified U.S. mail, but apparently was returned by the U.S. Postal Service as unclaimed, after which BIA re-sent the decision by regular U.S. mail to Appellants.