



INTERIOR BOARD OF INDIAN APPEALS

Bonnie Matt v. Rocky Mountain Regional Director, Bureau of Indian Affairs

54 IBIA 263 (02/14/2012)

Related Board case:
53 IBIA 259



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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BONNIE MATT,)	Order Docketing and Dismissing Appeal
Appellant,)	
)	
v.)	
)	Docket No. IBIA 12-049
ROCKY MOUNTAIN REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	February 14, 2012

Appellant Bonnie Matt appeals to the Board of Indian Appeals (Board) from an October 4, 2011, decision of the Rocky Mountain Regional Director (Regional Director), Bureau of Indian Affairs (BIA). In his decision, the Regional Director found that there was no approved and recorded Grant of Easement for Right-of-Way for legal access across Allotment No. 1747-G to Allotment No. T1745-B,¹ where Appellant’s Homesite Lease #14-20-0251-4501 is situated.² We docket this appeal, but dismiss it for lack of jurisdiction because it is untimely.

The Regional Director mailed his October 4 decision by certified mail to Appellant at her post office box. The 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 her that “[n]o extension of time may be granted for filing a Notice of Appeal.” Decision at 2-3 (unnumbered). The U.S. Postal Service’s Track-and-Confirm service on its website as well as the return receipt card both show that the decision was delivered on November 1, 2011, and the card bears a signature of “Bonnie Matt” as the recipient. Appellant’s notice of appeal was postmarked 31 days later on Friday, December 2, 2011.

¹ Both allotments are located on the Blackfeet Reservation in Montana.

² The Regional Director’s decision addressed concerns raised by the Board in its previous decision on Appellant’s claim of a right-of-way, in which the Board vacated, in part, the Regional Director’s first decision, and remanded the matter for further consideration. *Matt v. Rocky Mountain Regional Director*, 53 IBIA 259 (2011).

In response to an Order to Show Cause why this appeal should not be dismissed as untimely, *see* 43 C.F.R. § 4.332(a), Appellant submitted an affidavit executed by her sister, Carol Bird. According to the affidavit, Appellant asked Bird to pick up her mail from the post office on November 1, 2011, which Bird did. However, Appellant did not retrieve or receive her mail from Bird until November 5, 2011, which Appellant claims is her date of receipt of the Regional Director’s decision. We disagree.

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; 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 Board has consistently held that receipt of a decision is imputed to a party when it is delivered and signed for at the party’s address of record. *See, e.g., Keane v. Northwest Regional Director*, 51 IBIA 143, 144 (2010); *Northwest Pipeline Corp. v. Acting Northwest Regional Director*, 36 IBIA 91, 93 (2001); *Pacific Enterprises Oil Co. (USA) v. Muskogee Area Director*, 26 IBIA 275, 276 (1994). Here, Appellant specifically authorized her sister, as Appellant’s agent, to retrieve her mail, and the sister did so on November 1. Thus, receipt of the decision by Appellant’s sister is imputed to Appellant on this date, the clock commenced to run for filing an appeal with the Board, and Appellant had 30 days, until December 1, 2011, either to hand-deliver or mail her notice of appeal. She did not meet this deadline. Instead, her appeal is postmarked December 2, 2011, and is 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 as untimely.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge