INTERIOR BOARD OF INDIAN APPEALS

Jan Killough v. Miami Agency Superintendent, Bureau of Indian Affairs

57 IBIA 50 (05/13/2013)

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

JAN KILLOUGH,	)	Order Docketing and Dismissing
Appellant,	)	Appeal
	)	
v.	)	
	)	Docket No. IBIA 13-088
MIAMI AGENCY SUPERINTENDENT,	)	
BUREAU OF INDIAN AFFAIRS,	)	
Appellee.	)	May 13, 2013

On April 22, 2013, the Board received a notice of appeal from Jan Killough (Appellant).[1] Appellant seeks review of a March 12, 2013, letter (Letter) from the Miami Agency Superintendent (Superintendent), BIA. The Superintendent's Letter was sent to Appellant after, and in partial response to, a March 4, 2013, decision (Decision) by the Acting Eastern Oklahoma Regional Director, BIA, which vacated an earlier decision by the Superintendent to approve a chat sales agreement for the Woodchuck Chat Pile on Quapaw Allotment No. 160 (See-Sah). The Regional Director remanded the matter to the Superintendent for further action.[2]

We dismiss this appeal because the Board has no jurisdiction over an appeal from an action by the Superintendent. And even if Appellant intended to appeal from the Regional Director's Decision, we would still lack jurisdiction because the time for appealing from the Decision expired before Appellant filed his appeal with the Board.

---

[1] The notice of appeal was filed by counsel for Appellant, who spells Appellant's name "Kellough." Appellant's signature appears to be spelled "Killough," which is consistent with the spelling used by the Bureau of Indian Affairs (BIA), and the Board uses that spelling accordingly.

[2] In the Decision, the Regional Director found that the form provided to Appellant, to accept or not accept a sales offer, stated incorrectly Appellant's ownership interest in the Woodchuck Chat Pile. The Regional Director instructed the Superintendent (1) to provide Appellant with a corrected form for Appellant's consideration, (2) to provide Appellant with an application for Removal of Restrictions, and (3) to issue a new decision concerning the proposed chat sale based on the corrected documents, when and if they are returned by Appellant. It appears that the Superintendent's Letter was intended to address the first two of these directives.

Appellant's notice of appeal challenges the Superintendent's Letter as a "decision." Notice of Appeal at 1. Even assuming that the Superintendent's Letter may be characterized as final "action" or a "decision" of the Superintendent within the meaning of the appeal regulations, the Board still lacks jurisdiction over an appeal from that action or decision. The Board's jurisdiction is limited to the authority vested in it by regulation or otherwise delegated to it by the Secretary of the Interior. *See* 43 C.F.R. § 4.1(b)(1). With exceptions not relevant here, the Board lacks jurisdiction to review action by a BIA superintendent. *Marruffo v. Southern California Agency Superintendent*, 53 IBIA 276, 277 (2011) (dismissing appeal); *Gardner v. Uintah and Ouray Agency Superintendent*, 51 IBIA 166, 167 (2010) (same); *see* 43 C.F.R. 4.331(a).

Although it does not appear that Appellant's appeal is directed at the Decision, such an appeal would be untimely.[3] 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). Untimely appeals must be dismissed. *Id*. The Decision provided interested parties (including Appellant) with accurate instructions for filing an appeal with the Board, and it was sent to Appellant by certified mail. The U.S. Postal Service's Track-and-Confirm website shows that the March 4 Decision was delivered to Appellant on March 11.[4] Appellant filed this appeal more than 30 days later, on April 19, as shown on the postmark on the envelope. *See id*. § 4.310(a) (filing date). Thus, if Appellant intended to challenge the Regional Director's Decision, we would still lack jurisdiction because the appeal 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 dockets but dismisses this appeal for lack of jurisdiction.

I concur:

// original signed	//original signed
Steven K. Linscheid	Debora G. Luther
Chief Administrative Judge	Administrative Judge

[3] Nor is it apparent that Appellant would have standing to appeal from the Decision, which granted relief to Appellant by vacating the Superintendent's earlier decision.

[4] The Board also obtained from the Regional Director's office a copy of the return receipt card from Appellant, which also reflects the March 11 date of delivery.