



INTERIOR BOARD OF INDIAN APPEALS

Lynn DeFino v. Pacific Regional Director, Bureau of Indian Affairs

57 IBIA 189 (07/08/2013)



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

LYNN DeFINO,)	Order Docketing and Dismissing
Appellant,)	Appeal
)	
v.)	
)	Docket No. IBIA 13-119
PACIFIC REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	July 8, 2013

Lynn DeFino (Appellant) appealed from an April 30, 2013, decision (Decision) of the Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA).¹ Appellant sent her notice of appeal to the Regional Director, who transmitted the appeal to the Board of Indian Appeals (Board). We docket but dismiss this appeal because the Regional Director provided accurate appeal instructions for filing an appeal with the Board, and the appeal was not filed with the Board within the 30-day period for filing an appeal.

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 for 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); *see Confederated Tribes and Bands of the Yakama Nation v. Northwest Regional Director*, 56 IBIA 176, 181-82 (2013). The 30-day deadline for filing an appeal is jurisdictional. 43 C.F.R. § 4.332(a). Untimely appeals must be dismissed. *Id.*

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., Danks v. Great Plains Regional Director*, 54 IBIA 154, 155 (2011); *Siemion v. Rocky Mountain Regional Director*, 48 IBIA 249, 256 (2009). An appellant who ignores explicit appeal instructions and files her notice

¹ The Regional Director affirmed a January 18, 2012, decision of BIA’s Palm Springs Agency Superintendent, which cancelled, for non-payment of rent, Appellant’s residential sublease for Lot 53 of Tract No. 9205, located in Palm Springs, California.

of appeal in the wrong office bears the risks of delays in transmitting her notice of appeal to the Board. *Siemion*, 48 IBIA at 256.

The Regional Director's Decision provided the 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 & Confirm website indicates that the Decision was delivered to Appellant on May 17, 2013. The Board also received a copy of the certified mail return receipt card from the Regional Director, which bears Appellant's signature and which recorded the delivery date as May 17, 2013. Calculated from that delivery date, the deadline for filing an appeal with the Board expired on June 17, 2013.²

Appellant did not mail her appeal to the Board, but instead sent the appeal to the Regional Director, who transmitted it to the Board. The Board received the appeal on June 18, 2013. Because Appellant's notice of appeal was filed with the Board after the 30-day appeal period expired, her 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 dismisses this appeal as untimely.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge

² The 30th day after the date the Decision was delivered was Sunday, June 16, 2013. When the last day for filing a document with the Board falls on a Saturday, Sunday, or Federal holiday, the time period is automatically extended to the next business day, which in this case was Monday, June 17, 2013. 43 C.F.R. § 4.310(c)(2).

In her notice of appeal, Appellant states that she received the Decision on May 18, but even calculated from that delivery date, the deadline for filing an appeal would be June 17.