



## INTERIOR BOARD OF INDIAN APPEALS

Voncile J. Mitchell v. Acting Southern Plains Regional Director, Bureau of Indian Affairs

58 IBIA 188 (01/28/2014)



# United States Department of the Interior

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

VONCILE J. MITCHELL,	)	Order Docketing and Dismissing
Appellant,	)	Appeal
	)	
v.	)	
	)	Docket No. IBIA 14-038
ACTING SOUTHERN PLAINS	)	
REGIONAL DIRECTOR, BUREAU	)	
OF INDIAN AFFAIRS,	)	
Appellee.	)	January 28, 2014

Voncile J. Mitchell (Appellant) appealed from a September 25, 2013, decision (Decision) of the Acting Southern Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA).<sup>1</sup> Although Appellant served the Regional Director, Assistant Secretary – Indian Affairs (Assistant Secretary), and other interested parties with copies of her notice of appeal, she failed to file her appeal with the Board of Indian Appeals (Board) within the 30-day period for filing an appeal. Accordingly, we docket but dismiss this appeal as 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 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, 181-83 (2013). The 30-day deadline for filing an appeal is jurisdictional, 43 C.F.R. § 4.332(a), and cannot be extended by the Board, *see id.* § 4.310(d)(1). Untimely appeals must be dismissed. *Id.* § 4.332(a).

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., DeFino v. Pacific Regional*

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<sup>1</sup> In the Decision, the Regional Director retroactively approved Maynard L. Potts’s request to gift deed his interest in 0.3125 acre of land in Jackson County, Kansas, to his grandson, John M. Potts.

*Director*, 57 IBIA 189, 189-90 (2013); *Danks v. Great Plains Regional Director*, 54 IBIA 154, 155 (2011). An appellant who ignores explicit appeal instructions and files her notice of appeal in the wrong office bears the risks of delays in transmitting her notice of appeal to the Board. *DeFino*, 57 IBIA at 189-90.

Here, the Regional Director's decision advised potential appellants that any appeal from the Decision must be filed with the Board within 30 days of receipt, it provided the Board's address, and it cited the Board's appeal regulations, which include the requirements for filing an appeal with the Board.

The Board first received a copy of Appellant's notice of appeal on November 18, 2013. Appellant did not send this copy of the notice of appeal to the Board. Instead, it was included in the administrative record for the Decision, which was filed with the Board by the Regional Director. *See* Administrative Record Tab 42. In the notice of appeal, Appellant stated that she received the Decision on September 27, 2013. Thus, the 30-day deadline for filing an appeal with the Board expired on October 28, 2013. 43 C.F.R. § 4.332(a).<sup>2</sup> Because the Board received Appellant's notice of appeal after October 28, the Board ordered Appellant to show cause why her appeal should not be dismissed as untimely. Pre-Docketing Notice and Order for Appellant to Show Cause, Nov. 22, 2013, (OSC), at 1-2. The Board directed Appellant to submit proof that she mailed her notice of appeal to the Board on or before October 28. *Id.* at 2.

In response to the OSC, Appellant submitted certified mail return receipt cards from the U.S. Postal Service showing that her notice of appeal was mailed to the Regional Director, Assistant Secretary, and several other interested parties. But Appellant provided no evidence that she mailed or otherwise sent her notice of appeal to the Board. The Board is not part of BIA, nor is the Board within the Office of the Assistant Secretary, and sending an appeal to either a BIA regional director or the Assistant Secretary—both of whom must be served with their own copy—is not the same as filing an appeal with the Board. *See No More Slots v. Pacific Regional Director*, 56 IBIA 233, 238-40 (2013) (rejecting appellants' argument that their appeals were timely, in part, because they filed the appeals with the BIA regional director); *see also LeCompte v. Acting Great Plains Regional Director*, 46 IBIA 242, 243 (2008) (appellant's assertion that she served BIA and the Assistant Secretary "does not satisfy the regulatory requirement that she timely file her notice of appeal with the Board"). Because Appellant was required to file her appeal with the Board by October 28, and she did not do so, her appeal is untimely.

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<sup>2</sup> The 30th day fell on a Sunday, so the deadline was moved to the next business day, which was Monday, October 28. *See* 43 C.F.R. § 4.310(c)(3).

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:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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//original signed  
Thomas A. Blaser  
Administrative Judge