



## INTERIOR BOARD OF INDIAN APPEALS

Greyhound Adoption Center v. Acting Pacific Regional Director, Bureau of Indian Affairs

58 IBIA 228 (03/24/2014)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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GREYHOUND ADOPTION CENTER,	)	Order Docketing and Dismissing
Appellant,	)	Appeal
	)	
v.	)	
	)	Docket No. IBIA 14-043
ACTING PACIFIC REGIONAL	)	
DIRECTOR, BUREAU OF INDIAN	)	
AFFAIRS,	)	
Appellee.	)	March 24, 2014

The Greyhound Adoption Center (Appellant), appealed to the Board of Indian Appeals (Board) from an August 1, 2013, decision (Decision) by the Acting Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA).<sup>1</sup> Appellant served the Regional Director and several other interested parties with copies of its notice of appeal, but failed to file its appeal with the Board until after the 30-day period for filing an appeal had expired. Accordingly, we docket but dismiss this appeal as untimely.<sup>2</sup>

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) (emphasis added). 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)(1); *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).

In the present case, the 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

<sup>1</sup> The Decision, if affirmed, *see infra* note 2, would accept into trust for the Sycuan Band of the Kumeyaay Nation (Tribe) 17.51 acres of land, located in San Diego County, California.

<sup>2</sup> The Board has several other consolidated appeals from the Decision, which remain pending. *Crest-Dehesa-Granite Hills-Harbison Canyon Subregional Planning Group, et al. v. Acting Pacific Regional Director*, Docket No. IBIA 13-140 & consol. The dismissal of this appeal does not affect those consolidated appeals.

filing an appeal with the Board. The Board first received a copy of Appellant's notice of appeal on December 23, 2013. That copy was mailed to, and thus filed with, the Board on December 19, 2013, as shown by the postmark on the envelope. The notice of appeal itself was dated August 29, 2013, and was enclosed with a cover letter from Appellant stating that the appeal "was sent on September 1, 2013," that Appellant had not received a response, and that Appellant is submitting the appeal "again." Letter from Kathy Johnson to Board, Dec. 19, 2013.<sup>3</sup>

Because the date on Appellant's notice of appeal indicated that Appellant had received a copy of the Decision in August 2013, and thus the 30-day deadline for filing an appeal would have expired in September 2013, the Board ordered Appellant to show cause why the appeal should not be dismissed as untimely. Pre-Docketing Notice, Order for Appellant to Complete Service, and Order for Appellant to Show Cause, Dec. 30, 2013 (OSC), at 2-3. The Board directed Appellant to submit evidence that it had mailed its notice of appeal to the Board prior to when the 30-day deadline from its receipt of the Decision expired. *Id.* at 3.

In response to the OSC, Appellant submitted copies of certified mail return receipt cards from the U.S. Postal Service showing that its notice of appeal was mailed to the Regional Director, and several other interested parties. But Appellant provided no evidence that it mailed its notice of appeal to the Board at that time. Sending copies of a notice of appeal to interested parties, including the Regional Director (the appellee), does not constitute filing an appeal with the Board. The only copy of the appeal filed by Appellant with the Board is the copy filed by mail on December 19, 2013. Because Appellant has not shown that it filed the appeal with the Board within 30 days from its receipt of the Decision, the Board finds that 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 docketed but dismisses this appeal.

I concur:

          // original signed            
Steven K. Linscheid  
Chief Administrative Judge

          //original signed            
Thomas A. Blaser  
Administrative Judge

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<sup>3</sup> The Board received a copy of the December 19 letter and enclosure by facsimile on December 19. Although not relevant in this case in determining that Appellant has failed to show that its appeal is timely, the Board's regulations do not recognize, and the Board does not accept, filings of a notice of appeal by facsimile.