



INTERIOR BOARD OF INDIAN APPEALS

Shoshone-Bannock Tribes of the Fort Hall Reservation v. Bureau of Indian Affairs,
Department of the Interior

61 IBIA 226 (08/24/2015)

Denying Petition for Reconsideration of:
61 IBIA 98



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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SHOSHONE-BANNOCK TRIBES OF)	Order Dismissing Petition
THE FORT HALL RESERVATION,)	for Reconsideration and
Appellant,)	Motion for Stay
)	
v.)	
)	Docket No. IBIA 13-032-1
BUREAU OF INDIAN AFFAIRS,)	
DEPARTMENT OF THE INTERIOR,)	
Appellee.)	August 24, 2015

On July 15, 2015, the Board of Indian Appeals (Board) decided this appeal by the Shoshone-Bannock Tribes of the Fort Hall Reservation (Tribe) from the failure of the Bureau of Indian Affairs (BIA) to issue a written declination decision in response to the Tribe’s proposal for startup costs for an expanded Indian Self-Determination and Education Assistance Act contract. *See* 61 IBIA 98 (Order to Award Indian Self-Determination Act Contract Modification for Startup Costs). On August 20, 2015, the Board received a Petition for Reconsideration and Motion for Stay (Petition) from BIA. The Board dismisses the Petition as untimely because, as evidenced by the postage affixed to the envelope in which the Petition was mailed to the Board, it was filed after the 30-day deadline expired for filing a petition for reconsideration.

As the Petition notes, 43 C.F.R. § 4.315 provides that a petition for reconsideration “must be filed with the Board within 30 days from the date of the decision.” Petition at 1 n.1. With exceptions not relevant here, the effective date for filing a pleading with the Board is the date of mailing (if sent by U.S. mail) or the date of personal delivery (if not mailed). *See* 43 C.F.R. § 4.310(a)(1); *see also Estate of Rudolph Lawrence Victor St. John*, 57 IBIA 182 (2013) (dismissing as untimely a petition for reconsideration); *Estate of Margerate Arline Glenn*, 54 IBIA 270 (2012) (same); *see generally Confederated Tribes and Bands of the Yakama Nation v. Northwest Regional Director*, 56 IBIA 176, 180-83 (2013).

In the present case, the Board’s decision was dated July 15, 2015, and thus the deadline for filing a petition for reconsideration was Friday, August 14, 2015. The envelope in which the Petition was mailed to the Board bears a Pitney Bowes U.S. Postage imprint of August 17, 2015, thus showing that postage was affixed on that date. The Petition itself is dated August 14, 2015, and was certified as having been placed on that date “into the outgoing U.S. Mail for the Office of the Solicitor, . . . according to regular

procedures.” Petition at 9. But whatever those regular procedures may be, it is clear from the postage that it was neither stamped, nor actually placed in the U.S. mail system, i.e., filed by mail, until after August 14. Thus, the Petition for Reconsideration must be dismissed as untimely.¹ Cf. *Blackdeer v. Midwest Regional Director*, 35 IBIA 92 (2000) (finding postmark dispositive). To the extent BIA would have the Board separately consider the motion for a stay that is incorporated in the Petition, the motion must also be dismissed as untimely. See *Estate of Raymond P. Sauser*, 59 IBIA 116, 117 (2014).

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 as untimely BIA’s Petition for Reconsideration and Motion for Stay.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge

¹ A copy of the Petition was sent by fax to the Board on August 14, 2015, but the Board’s regulations do not authorize filing by facsimile.