

LEONARD BOWN

IBLA 72-429

Decided July 16, 1973

Appeal from order (Utah 3-72-2) of Administrative Law Judge, 1/ Dent D. Dalby dismissing appeal from decision of District Manager.

Affirmed.

Appeals -- Grazing Permits and Licenses: Appeals -- Rules of Practice: Appeals: Dismissal

An appeal is properly dismissed where the party who has appealed does not state clearly and concisely why he believes the decision is in error.

Grazing Permits and Licenses: Appeals -- Res Judicata -- Rules of Practice: Appeals: Failure to Appeal

An applicant for a grazing license or permit who fails to appeal a final decision of a District Manager within the prescribed period of time set forth in 43 CFR 4.470(a) is barred from thereafter challenging the matters adjudicated in such final decision.

APPEARANCES: Leonard Bown, pro se; Reid W. Neilson, Esq., for the Regional Solicitor, U.S. Department of the Interior, Salt Lake City, Utah.

Leonard Bown, a.k.a. Lenard Bown, has appealed from an order of Administrative Law Judge Dent D. Dalby. The order, dated April 27, 1972, dismissed Bown's appeal from a decision (Utah 3-72-2) of the District Manager of the Bureau of Land Management office at Fillmore,

1/ The change of title of the hearing officer from "Hearing Examiner" to "Administrative Law Judge" was effectuated pursuant to order of the Civil Service Commission and implemented by amendment of Subtitle A, Title 43, Code of Federal Regulations, 38 F.R. 10939.

Utah. The Judge dismissed the appeal on the basis that appellant failed to assert any errors in the decision of the District Manager.

On December 8, 1971, the Fillmore District Advisory Board recommended the redesignation of allotments to eliminate the naming of allotments after people in order to give continuity to permanent records and to thereby reduce possible errors in administration. The District Manager adopted the recommendation as his final decision on January 11, 1972, and the Bown Allotment was thereafter designated as the "Dry Hill" Allotment.

In response to the District Manager's decision of January 11, 1972, appellant sent the following letter to the District Manager:

Dear Sir;

In answer to your certified letter #484796, dated Jan. 11, 1972, I, Leonard Bown, and Sons protest your decision.

We have never been before any Examiner when all the decision [sic] were made.

We would like to go before the Advisory Board of Examiners. We feel the decisions are unfair to us.

We have called on Nelson, we didn't get any results. We will write back to Washington and contact our local Senators and hire an attorney if necessary.

We are going to fight until we fell a proper and fair decision has been made.

Very truly yours

/s/

Lenard Bown

The Judge properly dismissed Bown's appeal. The applicable regulation, 43 CFR 4.470(a) provides in part:

Any applicant whose interest is adversely affected by a final decision of the district manager may appeal to an examiner by filing his appeal in the office of the district manager within 30 days after receipt of the decision. The appeal shall state the reasons, clearly and concisely, why the appellant thinks the

decision of the district manager is in error. (Emphasis added.)

Appellant's letter constituted his appeal from the decision of the District Manager. Appellant failed, however, to articulate any reasons showing why the decision of the District Manager was in error. Pursuant to 43 CFR 4.470(d), where an applicant appeals to a Judge from a decision of a District Manager and fails to clearly and concisely state his grounds for error, the appeal is properly dismissed. See Eldon L. Smith, 8 IBLA 86, 89 (1972).

In his appeal from the Judge's order, appellant has raised several issues relating to his grazing privileges. All of these issues, however, were adjudicated by a final decision of the District Manager on March 18, 1968, and appellant failed to appeal that decision.

The applicable regulation, 43 CFR 4.470(b) states:

Any applicant for a grazing license or permit or any other person who, after proper notification, fails to protest or appeal a decision of a district manager within the period prescribed in the decision, shall be barred thereafter from challenging the matters adjudicated in such final decision.

The time prescribed in the decision of March 18, 1968, was 30 days from receipt thereof. Appellant cannot at this late date challenge the matters adjudicated in 1968. Malvin Pedroli, 75 I.D. 63 (1968); see Archie L. Carberry, A-30704 (October 23, 1967), and Levell Neal, A-30529 (May 2, 1966).

Appellant argues that the decision of March 18, 1968, was not served upon him and that he was not afforded an opportunity to be heard with respect to the matters adjudicated in 1968.

The record shows that the decision was sent to appellant by certified mail at his address of record. The decision was returned by the post office to the Bureau unclaimed. Pursuant to 43 CFR 1840.0-6(e)(3) (1968) 2/ the decision is deemed to have been received.

2/ 43 CFR 1840.0-6(e)(3) (1968) provides:

"A document will be considered to have been served at the time of personal service, of delivery of a registered or certified letter, or of the return by the post office of an undelivered registered or certified letter." The same provision now appears at 43 CFR 4.401(c)(3) and 43 CFR 4.422(c)(3).

In any event, appellant has applied for and received grazing privileges for his full authorized use (210 AUMs) within the Dry Hill (formerly Bown) Allotment for three consecutive years. Under these circumstances, appellant is not entitled to a readjudication of his license or permit. 43 FR 4115.2-1(e)(13)(i). ^{3/} See Phil Hillberry, 8 IBLA 428 (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals from the Secretary of the Interior, 43 CFR 4.1, the order appealed from is affirmed.

Frederick Fishman, Member

We concur:

Joseph W. Goss, Member

Douglas E. Henriques, Member

^{3/} The regulation provides:

"No readjudication of any license or permit, including free use license, will be made on the claim of any applicant or intervener with respect to the qualifications of the base property, or as to the livestock numbers or seasons of use of the Federal range allotment where such qualifications or such allotment has been recognized and license or permit has issued for a period of three consecutive years or more, immediately preceding such claim."

