

Editor's note: Appealed -- aff'd, Civ. No. A74-56 (D.Alaska Oct. 16, 1975)

ELBERT F. HOWEY

IBLA 74-131

Decided April 3, 1974

Appeal from decision of Alaska State Office, Bureau of Land Management, rejecting the final proof of a homestead entryman and cancelling his claim (A-063870).

Appeal dismissed.

Rules of Practice: Appeals: Dismissal

A notice of appeal to the Board of Land Appeals will be dismissed where the appellant failed to file a timely notice of appeal, and the notice, though filed within the 10-day grace period, was not transmitted within the 30-day period following service of the decision.

APPEARANCES: Stanley P. Cornelius, Esq., Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Elbert F. Howey has appealed from a decision of the Alaska State Office, Bureau of Land Management, dated September 14, 1973, which rejected his final proof for and cancelled his homestead claim, A-063870. His notice of appeal, dated October 31, 1973, was received by the Alaska State Office on November 1, 1973. The record contains a return receipt for the letter containing the decision of the State Office. This receipt was postmarked by the delivering office of the United States Postal Service on September 24, 1973, and was returned to the Alaska State Office on September 26, 1973.

The time limit for filing a notice of appeal is set forth in 43 CFR 4.411(a). There it is stated that a notice of appeal

* * * must be transmitted in time to be filed * * * within 30 days after the person taking the appeal is served with the decision from which he is appealing.

Thus appellant's notice of appeal should have been filed with the Alaska State Office at least by October 26, 1973. Failure to timely file a notice of appeal subjects the appeal to summary dismissal unless the notice "was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed." 43 CFR 4.401(a).

On its face, appellant's notice of appeal is defective as regards invoking the jurisdiction of this Board, for, as already noted, it was dated October 31, 1973, five days after it was required to be filed, and was not received in the Alaska State Office until the following day, November 1, 1973. Such a notice of appeal will be dismissed because it was not transmitted within the 30-day period following service of the decision. Margaret Chicharello, 9 IBLA 124 (1973). And although it was filed within the ten day grace period, it was not transmitted before October 26, 1973. Such a failure to file timely is jurisdictional and mandates summary dismissal. Estate of Knudsen, 10 IBLA 329, 330 (1973).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Frederick Fishman
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

