

UNITED STATES
v.
LOUIS CAMERLO AND EDWIN CAMERLO

IBLA 74-283

Decided October 4, 1974

Appeal from decision (Colorado Contest No. 475) of Administrative Law Judge Robert W. Mesch declaring appellants' mining claim null and void.

Dismissed.

1. Rules of Practice: Appeals: Dismissal--Rules of Practice: Appeals:
Timely filing

An appeal to the Board of Land Appeals will be dismissed where the appellant failed to file a timely notice of appeal with the proper officer, and the notice, though thereafter filed with the correct official, was not received within the mandatory or grace periods allowed by Departmental regulations.

APPEARANCES: Roger M. Breyfogle, Esq., Canon City, Colorado, for appellants; Richard L. Fowler, Esq., Office of the General Counsel, U.S. Department of Agriculture, Albuquerque, New Mexico, for appellee.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Louis Camerlo and Edwin Camerlo have appealed from a decision by Administrative Law Judge Robert W. Mesch, dated January 7, 1974, declaring appellants' Dixie lode mining claim null and void for lack of discovery. The decision stated:

The parties have the right of appeal from this decision to the Board of Land Appeals. The appeals must be in strict compliance with the

regulations in Title 43 Part 4. (See enclosed information pertaining to appeals procedures).

Roger Breyfogle, counsel for appellants, was served by certified mail, with the Administrative Law Judge's decision on January 9, 1974. The return receipt was signed by Roger Breyfogle and is postmarked January 9, 1974.

The Department's rules of practice, 43 CFR 4.411(a) require the following:

A person who wishes to appeal to the Board must file in the office of the officer who made the decision (not the Board) a notice that he wishes to appeal. The notice of appeal * * * must be transmitted in time to be filed in the office where it is required to be filed within 30 days after the person taking the appeal is served with the decision from which he is appealing. (Emphasis added.)

On January 25, 1974, counsel for the appellants sent a notice of appeal from the above decision to the Office of the General Counsel, United States Department of Agriculture (counsel for the appellee). The notice was received on January 28, 1974. On January 28, 1974, the Colorado State Office, Bureau of Land Management, received a copy of this notice. The State Office assumed that the original had been sent to Judge Mesch. The Judge, however, had not been sent a copy of the notice.

On February 20, 1974, Judge Mesch sent the following letter to the Colorado State Director, Bureau of Land Management:

The time for filing an appeal from my decision of January 7, 1974, has expired, the parties having received the decision on January 7 and 9. Since there has not been an appeal filed, my decision is the final action and the case is closed.

The Colorado State Director received Judge Mesch's letter on February 21, 1974, and thereafter received a copy of appellants' statement of reasons for appeal on February 27, 1974. Due to the heavy workload at the State Office, officials did not become aware of appellants' filing error until April 18, 1974, when the copies of the notice of appeal and statement of reasons for appeal were filed in the official contest record.

Following discovery of the error, the case file was returned to Judge Mesch on April 22, 1974, for any further action he deemed necessary. Judge Mesch then transmitted the case file to the Board.

Within the meaning of 43 CFR 4.411(a), an appeal is not filed until it is received by the officer who made the decision, who in this case was Judge Mesch. Filing a notice of appeal with opposing counsel and with the State Office, Bureau of Land Management, does not constitute a proper filing. Cf. Omar Stratman, A-30565 (February 23, 1966).

[1] Judge Mesch did not receive notice of the appeal until April 22, 1974, long after the 30-day mandatory time period for filing had expired. Nor was the appeal properly filed within the 10-day grace period allowed by the regulations of the Department. 43 CFR 4.401(a). Under such circumstances the notice of appeal cannot be considered and the failure being jurisdictional, the appeal must be dismissed. Cf. Presentin v. Seaton, 284 F.2d 195 (D.C. Cir. 1960); Estate of Louis W. Knudsen, 10 IBLA 329 (1973); Gerald D. Heden, 6 IBLA 291 (1972); United States v. Ebbert, A-30984 (June 3, 1968); Chester L. Clymer, A-26992 (September 29, 1955).

Therefore, 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.

Martin Ritvo
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

I concur in the result. Even if the appeal had been filed in time, there would appear to be no reason to disturb Judge Mesch's decision.

Joseph W. Goss
Administrative Judge

