

HOLLIS E. JUSTIS

IBLA 75-253

Decided June 25, 1975

Request for reconsideration of March 13, 1968, decision of Office of Appeals and Hearings, Bureau of Land Management, holding appellant's notice of location of homesite Anchorage AA 346 to be unacceptable for recordation.

Reconsideration denied.

1. Alaska: Homesites -- Rules of Practice: Appeals: Failure to Appeal -- Rules of Practice: Appeals: Timely Filing

Where request for reconsideration of Bureau of Land Management 1968 homesite decision is taken in 1974, appellant stating he was never served with decision, but where receipt in record shows service in 1968, reconsideration should be denied.

APPEARANCES: Richard F. Lytle, Esq., Houston and Lytle, Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Hollis E. Justis has requested reconsideration of a March 13, 1968, decision of the Office of Appeals and Hearings (OAH), Bureau of Land Management (BLM), 1/ affirming a February 6, 1968, decision of the Alaska State Office holding appellant's notice of location of homesite Anchorage AA 346 to be unacceptable for recordation.

1/ Effective July 1, 1970, the Board of Land Appeals, Office of Hearings and Appeals, assumed jurisdiction over all appeals pending before the Director, Bureau of Land Management, in the exercise of supervisory jurisdiction of the Secretary of the Interior (35 F.R. 10012, June 18, 1970). Such action implemented the Secretary's approval of the Solicitor's February 4, 1970, Memorandum which provided that the Board of Land Appeals would assume "jurisdiction over all cases now decided by the * * * Office of Appeals and Hearings of the Bureau of Land Management."

Appellant contends he has never been served with the March 13, 1968, decision. Appellant further asserts that only in October 1974, was he told someone had top filed his homesite, which led to his discovery of the March 13, 1968, decision. Such assertions are made both in appellant's request for reconsideration and in an affidavit executed and sworn to by appellant on December 5, 1974.

Appellant's case was noted closed by the BLM on June 30, 1969, for the reason that appellant did not appeal from the March 13, 1968, decision. 2/ Appellant had properly appealed the February 6, 1968, State Office decision.

[1] If appellant's contention as to service were correct, the time period for filing a notice of appeal would not have run in 1968. Departmental regulation 43 CFR 1844.2 (1968) provided that the time limit for filing a notice of appeal was 30 days after service of the decision. However, an examination of the record indicates that appellant did accept service of the March 13, 1968, decision on March 29, 1968. There is in the case file a return receipt card which is signed by one Hollis Justis, and which notes the delivery date for the accompanying article as March 29, 1968. A comparison of the signature on the return receipt card with other documents submitted by appellant indicates that the signature on the card is that of appellant. The address given for the party to which the receipt card was to be returned is "United States Department of the Interior, Bureau of Land Management, Washington, D.C. 20240." Since the only action shown in the record to have been taken by the Washington, D.C. Office of the BLM with respect to appellant was the March 13, 1968, decision, we determine that the return receipt card signed by appellant accompanied service of appellant with that decision.

The applicable regulation, 43 CFR 1844.2 (1968), governing the time limits for notice of appeals to the Secretary from a decision of the OAH, allowed 30 days for such notice, and stated that "[n]o extension of time will be granted for filing the notice of appeal * * *." The same language for appeals from decisions by BLM officials appears in 43 CFR 4.411(b) (1974). We hold that the March 13, 1968, decision of OAH is final as to appellant's interest, and the request for reconsideration should be denied. Cf. R. M. Barton, 7 IBLA 401 (1972).

2/ Appellant's case and that of a neighbor were decided in the same March 13, 1968, decision. The neighbor appealed to the Secretary and his case was ultimately reversed. Vernard E. Jones, 76 I.D. 133 (1969). That decision stated Justis did not appeal the March 13 decision and the decision was final as to him. Justis now alleges that (1) he knew Jones had prevailed, (2) prior to an unspecified date, he did not know Jones had appealed to the Secretary and (3) Justis assumed he also would ultimately prevail.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, the request for reconsideration is denied.

Joseph W. Goss
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Joan B. Thompson
Administrative Judge

