

JOHN JONES

IBLA 2004-183

Decided October 30, 2006

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting Alaska Native Veteran Allotment application AA-84032.

Affirmed.

1. Alaska: Alaska Native Veteran Allotment: Generally--Alaska: Native Allotments

In order to be eligible for an allotment under the Alaska Native Veterans Allotment Act (ANVAA), as amended, 43 U.S.C. § 1629g (2000), an applicant must have filed an application between July 31, 2000, and January 31, 2002, with the BLM Alaska State Office in Anchorage, Alaska. An applicant who delivered an application to a different bureau or office is not eligible unless BLM's Alaska State Office received the application by January 31, 2002, or the envelope containing that application is postmarked by that date.

2. Evidence: Generally--Alaska: Alaska Native Veteran Allotment: Generally

BLM properly rejects an application under the Alaska Native Veterans Allotment Act, as amended, 43 U.S.C. § 1629g (2000), if it was postmarked after January 31, 2002, absent a persuasive explanation supported by satisfactory corroborating evidence, typically by a postal official.

APPEARANCES: Carolyn G. Grzelak, Esq., Anchorage, Alaska, for appellant; Lisa M. Toussaint, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE JACKSON

John Jones has appealed from a February 25, 2004, decision of the Alaska State Office, Bureau of Land Management (BLM), rejecting his Alaska Native Veteran Allotment application AA-84032 because it was filed after the January 31, 2002, deadline established by 43 CFR 2568.70. His application was received on February 4, in an envelope bearing a postmark of February 1, 2002.

Appellant applied for two parcels of land pursuant to the Alaska Native Veterans Allotment Act (ANVAA), as amended, 43 U.S.C. § 1629g (2000):

During the eighteen month period following promulgation of implementing rules pursuant to subsection (e) of this section, [an Alaska Native who was on active military duty during a specified period of time] shall be eligible for an allotment of not more than two parcels of federal land totaling 160 acres or less under the Act of May 17, 1906, as such Act was in effect before December 18, 1971.

43 U.S.C. § 1629g(a)(1) (2000).^{1/} Rules implementing the ANVAA were promulgated and became effective on July 31, 2000. 65 FR 40953 (June 30, 2000). They established the following requirements for filing allotment applications:

§ 2568.70 If I am qualified for an allotment, when can I apply?

If you are qualified, you can apply between July 31, 2000 and January 31, 2002.

§ 2568.71 Where do I file my application?

You must file your application in person or by mail with the BLM Alaska State Office in Anchorage, Alaska.

^{1/} The 1906 Act, formerly codified as amended at 43 U.S.C. §§ 270-1 through 270-3 (1970), provided for the allotment of up to 160 acres of vacant, unappropriated, and unreserved nonmineral land in Alaska that had been subject to substantially continuous use and occupancy by an Alaska Native applicant for a period of 5 years. It was repealed, effective Dec. 18, 1971, subject to pending Native allotment applications, by section 18(a) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1617(a) (2000).

§ 2568.72 When does BLM consider my application to be filed too late?

BLM will consider applications to be filed too late if they are:

(a) Submitted in person after the deadline in section 2568.70, or

(b) Postmarked after the deadline in section 2568.70.

Appellant explains in his Statement of Reasons (SOR) that he sought the help of Joseph Pleasant, the Realty Officer of the Native Village of Kwinhagak, in filling out his application. According to Pleasant's affidavit, the Native Village of Kwinhagak had received an Indian Self Determination Act contract/compact with the Bureau of Indian Affairs (BIA) to provide realty services to its members. Jones and Pleasant both state that Jones came to his office to sign the application "before January 31, 2002" and that they agreed that Pleasant would mail his application. Pleasant states in his affidavit that he went to the Post Office in Quinhagak on January 31, discovered that the Post Office had "closed early" (preventing him from getting appellant's application postmarked on that date), and returned the next day and mailed appellant's application.

Appellant maintains that his application was timely filed when it was signed and provided to Pleasant. Appellant contends that Pleasant was acting as BIA's agent by virtue of the Tribe's contract with BIA to perform realty services and that "filing with the BIA has been an accepted practice." (SOR at 3-4.)^{2/} Appellant also refers to 43 CFR 2568.21, which provides that the regulations implementing the Native Allotment Act of 1906 apply to ANVAA allotments, and argues that our decisions holding that an application under the 1906 Act may be filed with any bureau necessarily extend to ANVAA applications. (Reply at 2.)

[1] Even if Pleasant was acting as BIA's agent, BLM correctly asserts that its regulations state in "plain, unequivocal language" that ANVAA applications must be filed with the BLM State Office in Anchorage, not with BIA or its agents. (Answer at 3.) This Board has consistently held that when a regulation requires that a document be filed in a particular office, it may not be filed elsewhere: a notice of appeal will be dismissed unless it is filed "in the office of the officer who made the decision" on appeal, see Marc Thomsen, 148 IBLA 263 (1999); mining claims are forfeited if required location notices, affidavits of assessment work, maintenance fees, or fee waivers are sent to BLM offices other than the proper office, see Gold Leaf Enterprises, 105 IBLA 282 (1988); and oil and gas leases are terminated if timely payments are not received by the proper BLM office, see Petro Resources, Inc.,

^{2/} We express no view on the validity of appellant's assertion that "courts have held BIA liable under the Federal Tort Claims Act for actions taken by a tribal employee" acting under such a contract or compact. (SOR at 3).

123 IBLA 310 (1992). As we stated in Thomsen, 148 IBLA at 264: “The need to conduct business at the BLM office having appropriate jurisdiction has long been recognized,” citing Mathews v. Zane, 20 U.S. (7 Wheat.) 164, 209-10 (1822). In addition and with respect to appellant’s reliance on 43 CFR 2568.21, this savings regulation operates only “to the extent [Subpart 2568 regulations] are not inconsistent with section 41 of ANCSA or other provisions in this Subpart.” To hold that an application may be filed anywhere other than with the BLM State Office in Anchorage is clearly inconsistent with the express requirements of 43 CFR 2568.71. So considered, appellant’s ANVAA allotment application was not filed when he provided it to Pleasant, even assuming he was a valid, authorized agent of BIA.

[2] We note that BLM’s rule providing that an ANVAA allotment application will be too late if it is “[p]ostmarked after the deadline in section 2568.70,” 43 CFR 2568.72(b), is similar to “postmark” regulations that apply to other BLM filings such as mining claim maintenance fees and annual assessments. See Clifford Fredrickson, 144 IBLA 105, 108 (1998) (“One purpose of the ‘postmark’ rule is to make it unnecessary to consider disputes concerning when a document may have actually been mailed.”), and Barodynamics, Inc., 135 IBLA 352, 354 (1996). The Board has also crafted a quasi-postmark rule for reinstating a lease where annual rental payments were not timely received, and the issue to be decided is whether the lessee’s late filing was justifiable or not due to a lack of reasonable diligence under 30 U.S.C. § 188 and 43 CFR 3108.2-1. See Russell D. Brown, 56 IBLA 345, 347-48 (1981) (a late payment is justifiable “if proximately caused by extenuating circumstances outside the lessee’s control”) and Kenneth W. Macek, 49 IBLA 153, 155 (1980). We have consistently recognized that a filing’s postmark is controlling unless a persuasive explanation is provided and supported by satisfactory corroborating evidence, typically by a postal official. For example, in Edward Malz, 33 IBLA 22 (1977), appellant placed his submission in a mail chute which indicated that it would be picked up later that day. Although postmarked 2 days later, we held that Malz’s mailing was timely because a postal official corroborated that the time of pick up on the mail chute was in error. Id. at 24 (“It is only fair that those who do rely on posted schedules be protected.”) Appellant here provided a persuasive explanation for his “late” postmark (i.e., the post office closed early) but failed to provide satisfactory corroborating evidence (e.g., an unequivocal statement by a postal official that the Post Office in Quinhagak closed early on January 31, 2002). Accordingly and under the circumstances presented, BLM properly rejected his application because it was filed too late under 43 CFR 2568.72. See e.g., Macek, 49 IBLA at 155.

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

James K. Jackson
Administrative Judge

I concur:

David L. Hughes
Administrative Judge