



INTERIOR BOARD OF INDIAN APPEALS

Western Geophysical v. Anadarko Area Director, Bureau of Indian Affairs

25 IBIA 74 (12/13/1993)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

WESTERN GEOPHYSICAL,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 94-21-A
ANADARKO AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	December 13, 1993

Appellant Western Geophysical seeks review of an October 4, 1993, decision issued by the Anadarko Area Director, Bureau of Indian Affairs (Area Director; BIA), finding that it had failed to file a timely notice of appeal from an August 12, 1993, decision of the Anadarko Agency Superintendent, BIA (Superintendent). The Superintendent assessed appellant \$4,144 in double damages for trespassing on six Indian allotments. 1/ For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

The Superintendent's decision gave appellant the following information:

My decisions may be appealed to the Area Director, P.O. Box 368, Anadarko Area Office, Anadarko, Oklahoma 73005, in accordance with the regulations in 25 CFR Part 2 (Copy Attached). Your notice of appeal must be filed in this office within 30 days of the date you receive this decision. The date of filing your notice of appeal is the date it is postmarked or the date it is personally delivered to this office. \* \* \*

If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Should you have further questions concerning this matter, please contact \* \* \* [the] Realty Specialist of this agency \* \* \*. [Emphasis in original.]

The information provided by the Superintendent tracked 25 CFR 2.13 which provides:

1/ The allotments are Nohoco, Comanche 2049, NE¼ SE¼, sec. 2, T. 5 N., R. 10 W.; Tom Littlechief, Kiowa 2815, NE¼, sec. 3, T. 5 N., R. 10 W.; Yeagtaupt, Kiowa 118, NW¼ NE¼, sec. 32, T. 6 N., R. 10 W.; Domebo, Kiowa 1879, SE¼, sec. 29, T. 6 N., R. 10 W.; Sahnamah, Kiowa 1880, SW¼, sec. 29, T. 6 N., R. 10 W.; and Oyebi, Kiowa 613, E½SE¼, sec. 30, T. 6 N., R. 10 W.

(a) An appeal document is properly filed with an official of the Bureau of Indian Affairs:

\* \* \* \* \*

(2) By mail to the facility officially designated for receipt of mail addressed to the official; the document is considered filed by mail on the date that it is postmarked.

Appellant appealed from the Superintendent's decision. By letter of September 21, 1993, the Superintendent informed appellant that its appeal had been received and that it had 30 days from September 16, 1993, the date on which the notice of appeal was postmarked, to file a statement of reasons in his office. This information was in accordance with 25 CFR 2.10, which addresses the filing of statements of reasons.

Before appellant filed a statement of reasons, by letter of October 4, 1993, the Area Director informed appellant that its notice of appeal was not timely filed. The Area Director's decision states:

The Superintendent's decision is dated August 12, 1993, and was signed for on August 16, 1993, which began the 30 day time period for appealing the decision.

We received your appeal on September 17, 1993, post marked September 16, 1993, which is 31 days from the date you received and signed for the Superintendent's decision letter. We have, therefore, determined that your appeal is not timely filed and that the Superintendent's decision is affirmed \* \* \*.

Appellant appealed this decision to the Board. Because the Area Director's decision appeared correct on its face, on November 9, 1993, the Board gave appellant until November 30, 1993, in which to show cause why the Area Director's decision should not be affirmed.

Appellant responded that it was confused by the Superintendent's letters of August 12 and September 21. Appellant argues that if the August 12 letter was final for the Superintendent, appellant should not have been directed to an Agency employee for further information. It also contends that the September 21 letter instructing it to file a statement of reasons with the Superintendent lead it to believe that the Superintendent "intended to vacate his original decision or at least to amend it" (Response at 2).

The Superintendent's decision letter indicates that copy of 25 CFR Part 2 was sent to appellant. Appellant has not disputed this statement. Even if the enclosure had inadvertently been omitted from the letter, appellant was referred to the appropriate regulations. Appellant is also presumed to have knowledge of duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947).

Both the Superintendent's August 12 letter and 25 CFR 2.13 clearly informed appellant that its notice of appeal was due within 30 days from its

receipt of the letter. 25 CFR 2.15 explained the way in which time periods are computed. The August 12 letter and 25 CFR 2.9 informed appellant that its notice of appeal was to be filed in the Superintendent's office because the Superintendent was the official whose decision was being appealed. The September 21 letter and 25 CFR 2.10 informed appellant that its statement of reasons was to be filed in the Superintendent's office for the same reason.

The Board fails to discern any reasonable connection between the reference to an Agency employee in the August 12 letter and appellant's failure to file a timely notice of appeal. Furthermore, the September 21 letter could not possibly have confused appellant as to when its notice of appeal was due, since the appeal had already been filed before that letter was written.

The Board concludes that appellant has not shown error in the Area Director's decision finding it failed to file a timely notice of appeal.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Anadarko Area Director's October 4, 1993, decision is affirmed.

\_\_\_\_\_  
//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

\_\_\_\_\_  
//original signed  
Anita Vogt  
Administrative Judge