



INTERIOR BOARD OF INDIAN APPEALS

Bette L. McLean v. Portland Area Director, Bureau of Indian Affairs

18 IBIA 311 (06/11/1990)



United States Department of the Interior

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

BETTE L. McLEAN,	:	Order Docketing and Dismissing
Appellant,	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 90-95-A
PORTLAND AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	June 11, 1990

On June 4, 1990, the Board of Indian Appeals received a notice of appeal from Bette L. McLean, seeking review of a March 23, 1990, decision of the Portland Area Director, Bureau of Indian Affairs, which denied her request for a grant under the Indian Business Development Program.

Appellant states that she originally filed her notice of appeal on April 18, 1990, with the Assistant Secretary - Indian Affairs. The Area Director's decision correctly advised her to file her notice of appeal with the Board and provided the Board's address.

It is apparent that appellant received the Area Director's decision no later than April 18, 1990. Her appeal to the Board is postmarked June 1, 1990. Accordingly, her appeal is untimely under 43 CFR 4.332(a), which requires that a notice of appeal be filed "within 30 days after receipt by the appellant of the decision from which the appeal is taken."

43 CFR 4.332(a) further provides that "[a] notice of appeal not timely filed shall be dismissed for lack of jurisdiction." 43 CFR 4.334 provides: "Requests for extensions of time to file documents may be granted upon a showing of good cause, except for the time fixed for filing a notice of appeal which, as specified in § 4.332 of this part, may not be extended."

The Board has accepted untimely filed notices of appeal where the untimeliness is the result of incorrect information given to the appellant by BIA. See, e.g., Lovelock Paiute Tribe v. Acting Phoenix Area Director, 18 IBIA 249, 250 (1990); Washoe Tribe v. Phoenix Area Director, 18 IBIA 192, 193 n.1 (1990). Cf. 25 CFR 2.13(c): "Notwithstanding any other provision of this section an official deciding an appeal shall allow late filing of a misdirected document, including a notice of appeal, where the official finds that the misdirection is the fault of the government."

However, where BIA gives correct instructions for filing a notice of appeal, and an appellant's failure to follow those instructions results in an untimely appeal to the Board, there is no way the mandate in 43 CFR 4.332(a) may be avoided. The Board is required by that section to dismiss an untimely notice of appeal. Jones v. Assistant Anadarko Area Director, 17 IBIA 122 (1989).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Portland Area Director's March 23, 1990, decision is dismissed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge