



INTERIOR BOARD OF INDIAN APPEALS

David J. Tsosie v. Acting Navajo Regional Director, Bureau of Indian Affairs

42 IBIA 131 (01/13/2006)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

DAVID J. TSOSIE,	:	Order Docketing and Dismissing
Appellant,	:	Appeal
	:	
v.	:	
	:	
ACTING NAVAJO REGIONAL	:	Docket No. IBIA 06-12-A
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee.	:	January 13, 2006

On October 17, 2005, the Board of Indian Appeals (Board) received a notice of appeal from David J. Tsosie (Appellant), President of Community Development Resources, Inc. (CDRI), appealing an August 30, 2005 decision of the Acting Navajo Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director's decision cancelled Business Lease No. FD-05-224 between CDRI and the Navajo Nation. The Board docketed the appeal, but dismisses it as untimely.

A notice of appeal from a decision of a BIA Regional Director must be filed with the Board within 30 days after receipt by the appellant of the decision from which the appeal is taken. 43 C.F.R. § 4.332(a). The 30-day deadline for filing a notice of appeal is jurisdictional. *Id.*; Edwards v. Pacific Regional Director, 42 IBIA 40, 41 (2005).

Appellant received the Regional Director's decision on September 7, 2005, as shown on a copy of the certified mail receipt card provided to the Board by the Regional Director. Appellant sent his notice of appeal by commercial courier, and therefore the date of filing was the date of delivery, October 17, 2005. *See* 43 C.F.R. § 4.310(a) (effective date of filing notice of appeal is date of mailing or date of personal delivery).

Because it appeared that Appellant had filed his notice of appeal more than 30 days after receiving the Regional Director's decision, on October 20, 2005 the Board ordered

Appellant to show cause on or before November 14, 2005 why the appeal should not be dismissed as untimely. 1/

The Board has received no response from Appellant, and the Board finds that this appeal is untimely.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board docketed this appeal, but dismisses it for lack of jurisdiction. 2/

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Katherine J. Barton
Acting Administrative Judge

1/ The Regional Director's decision correctly advised Appellant of the 30-day time period in which to file an appeal, but incorrectly provided an outdated address for the Board. Providing an incorrect address was harmless error in this case because Appellant has not shown that he made a timely attempt to follow the instructions given. See Hendry County, Florida v. Eastern Regional Director, 40 IBIA 135, 136 (2004). The FedEx label on the notice of appeal indicates that Appellant delivered it to FedEx on October 14, 2005, for delivery to the Board by October 17, 2005 — more than 30 days after Appellant's receipt of the Regional Director's decision. Moreover, the incorrect address caused no actual delay because FedEx delivered the appeal to the Board on October 17 as requested.

2/ On January 9, 2006, the Board received a motion from the Regional Director to dismiss this appeal as untimely. Because the Regional Director's motion states no new grounds for dismissal, the Board finds it unnecessary to afford Appellant another opportunity to address the timeliness issue.