LEIGHTON E. REUM,	:	Order Vacating Decision and
EAGLE MINERALS, INC.,	:	Remanding Case
Appellant	:	
	:	
v.	:	Docket No. IBIA 97-15-A
	:	
BILLINGS AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	February 2, 1998

Appellant Leighton E. Reum, Eagle Minerals, Inc., seeks review of an August 28, 1996, decision of the Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), dismissing an appeal from a decision of the Acting Superintendent, Fort Peck Agency, BIA, concerning Oil and Gas Lease No. 14-20-0256-8246 on the Fort Peck Indian Reservation. For the reasons discussed below, the Board of Indian Appeals (Board) vacates the Area Director's decision and remands this case for a decision on the merits or other appropriate action.

By letter dated June 1, 1996, and received by the Agency on June 4, 1996, Appellant appealed from the Superintendent's April 26, 1996, letter. The Notice of Appeal states in its entirety:

> I am officially appealing from your Letter of Determination dated April 26, 1996. I am specifically appealing at this date due to the fact that I have been ill and hospitalized for a period of time specified in the 30 days Notice of Appeal allotted to me. I have been unable to attend to my business affairs and have taken an extended leave of absence from my employment for a period of 60 days. I am currently under a doctor's care. I consider this matter very important to me and I ask for your consideration to grant my notice of appeal based upon above referenced situation that has been beyond my control. Thank you for your positive consideration in this matter and should you need any verification as to my hospitalization and leave of absence from my employment, please notify me of such and I will be more than happy to comply with further verification of such.
>
> In closing, my statement of reasons for the appeal will follow within the stated time frames allotted to me per your letter that I have above referenced.

On June 28, 1996, the Area Director notified Appellant that he had received the Notice of Appeal. The Area Director stated that he was requesting the administrative record from the Superintendent and that a decision would be issued "within 60 days from the date this office receives the administrative record from the agency." June 28, 1996, Letter at 1. The letter further stated that Appellant was required to notify all interested

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parties of his Notice of Appeal and Statement of Reasons, and that interested parties would have an opportunity to respond to Appellant's Notice of Appeal and Statement of Reasons.

Appellant filed a document entitled "Notice of Appeal and Statement of Reasons" with the Area Director. The document is dated July 1, 1996, but shows that service was made on August 8, 1996. The Area Director received this document on August 8, 1996.

The Area Director issued the decision under appeal on August 28, 1996. The decision dismissed the appeal, stating:

> [Y]our Notice of Appeal was timely filed; however, your Statement of Reasons [was] untimely filed in accordance with 25 C.F.R. §2.10(c). [1/] To be timely filed, the Statement of Reasons should have been received by the [BIA] on **July 5, 1996**. However, they were received on **August 8, 1996**." [2/]
>
> At no time did you request an extension of time to file the Statement of Reasons. Therefore, an appeal not timely filed with the BIA must be dismissed.

Appellant appealed to the Board and filed an opening brief. No other briefs were filed.

The issue on appeal is whether the Area Director properly dismissed Appellant's appeal. The Board first notes that although the decision states that "an appeal not timely filed with the BIA must be dismissed" (emphasis added), it is clear that the document which was not timely filed was Appellant's Statement of Reasons.

Under 25 C.F.R § 2.17(b),

> An appeal under this part may be subject to summary dismissal for the following causes:
>
> (1) If after the appellant is given an opportunity to amend them, the appeal documents do not state the reasons why the appellant believes the decision being appealed is in error, or the reasons for the appeal are not otherwise evident in the documents.

1/ Under 25 C.F.R. § 2.10(c), a statement of reasons not included with a notice of appeal must be filed "in the office of the official whose decision is being appealed within 30 days after the notice of appeal was filed in that office."

2/ This statement, when read with other statements in his decision, suggests that the Area Director considers the date of filing an appeal document to be the date of receipt by BIA. For this proposition, he cites a 1982 Board decision. The BIA's appeal regulations were revised in 1989. Since 1989, those regulations have provided that the date of filing an appeal document is the date of postmark or the date of personal delivery. 25 C.F.R. § 2.13(a).

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The Board discussed summary dismissals under 25 C.F.R. § 2.17(b)(1) in OK Tank Trucks, Inc. v. Muskogee Area Director, 31 IBIA 1 (1997). Under prior BIA appeal regulations, an appeal to BIA could be summarily dismissed for failure to file a statement of reasons. Present section 2.17(b)(1) was promulgated in 1989. The regulation was discussed in the preamble to the Federal Register publication of the final regulations:

> Two commenters recommended revisions concerning the provision in proposed § 2.17 that permitted summary dismissal for failure to file a statement of reasons. In response to these comments, this section has been revised to allow summary dismissal only where the reasons for the appeal cannot be determined from the appeal documents taken as a whole and only after the appellant has been given an opportunity to amend his/her appeal documents.

54 Fed. Reg. 6478, 6479 (Feb. 10, 1989). The Board held in OK Tank Trucks that "it is clear that, under the present regulations, an appeal cannot be summarily dismissed for failure to file a statement of reasons." 31 IBIA at 2.

The Board concluded that the notice of appeal in OK Tank Trucks, although cursory, stated grounds for the appeal, and therefore found that the reasons for the appeal could be determined from the appeal documents taken as a whole. The Board vacated the BIA decision summarily dismissing the appeal, and remanded the case for consideration on the merits.

Here, the Board finds that Appellant's Notice of Appeal did not set forth the grounds for the appeal. However, it further finds that there is no evidence that Appellant was given an opportunity to amend his appeal documents in order to show the grounds for the appeal. Under the facts of this case, it was error to dismiss Appellant's appeal for failure to file a timely statement of reasons.

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 Billings Area Director's August 28, 1996, decision is vacated, and this matter is remanded to him for a decision on the merits or, considering the length of time this matter has been pending before the Board, other appropriate action. 3/

Kathryn A. Lynn Chief Administrative Judge	Anita Vogt Administrative Judge

3/ In determining whether some action other than a decision on the merits is appropriate at this time, the Area Director may wish to consult with the Office of the Solicitor.

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