

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

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| In re Application of |) | Appeal No. 95-0123 |
| |) | |
| ROBERT E. BILLSTROM |) | DECISION |
| Appellant |) | |
| _____ |) | August 5, 1996 |

STATEMENT OF THE CASE

Appellant Robert E. Billstrom, filed a timely appeal of an Initial Administrative Determination [IAD] issued by the Restricted Access Management Division [Division] on July 14, 1995. The IAD denied Mr. Billstrom's application¹ for Quota Share [QS] under the Individual Fishing Quota [IFQ] program because it was not filed by the July 15, 1994 application filing deadline. Mr. Billstrom has adequately shown that his interest is directly and adversely affected by the IAD.

Because the record contains sufficient information on which to reach a final decision and there is no genuine and substantial issue of adjudicative fact for resolution, no hearing was ordered. 50 C.F.R. § 679.43(g)(2)-(3).²

ISSUE

Whether NMFS should accept the Appellant's application as timely filed.

BACKGROUND

Robert E. Billstrom sent his request for application [RFA] dated July 3, 1995 in an envelope postmarked July 5, 1995. On appeal Mr. Billstrom states that he believes he sent in a timely RFA and that it got lost in the mail. The reason he believes he sent in the RFA is that this would be the logical thing to do. However, he admits in a letter dated January 2, 1996 that he really does not know if he sent in the RFA, as he was busy at the time. He states that if he had thought of it he surely would have sent it in. He is fairly sure he sent in the RFA, but can not recall when or to whom it was sent.

¹The document at issue is entitled "Request for Application" [RFA]. An RFA is the equivalent of an application for the meeting of the application filing deadline under the IFQ program. See, Keith A. Buehner, Appeal No. 94-0001, September 26, 1994, *aff'd* March 2, 1995.

²Formerly 50 C.F.R. § 676.25(g)(2)-(3). All IFQ regulations were renumbered, effective July 1, 1996. See, 61 Fed. Reg. 31,270 (1996). The wording of the regulation in question was unchanged by the renumbering.

DISCUSSION

There is insufficient evidence in the record to support a finding that Mr. Billstrom sent an RFA to the Division by the July 15, 1994 deadline. The RFA received by the Division was sent in an envelope postmarked July 5, 1995, nearly a year after the deadline. Mr. Billstrom is unable to specifically recall facts demonstrating that he had sent in an RFA by the deadline.

The regulations implementing the IFQ program provide that an application received after July 15, 1994, "will not be considered."⁶ I have no authority to alter the provisions of the regulations, however sympathetic Mr. Billstrom's request.⁴ Mr. Billstrom has alleged that he was busy at the time, but has not alleged that he was disabled in any way that prevented him from filing a timely RFA or that any extraordinary circumstances existed that would justify equitable tolling of the filing period.⁵

FINDINGS OF FACT

1. Robert Billstrom's only request for application was mailed to the Division in an envelope postmarked July 5, 1995.
2. Robert Billstrom did not suffer any disability or extraordinary circumstance that prevented him from meeting the July 15, 1994 deadline.

CONCLUSIONS OF LAW

1. Robert Billstrom's request for application was not timely filed.
2. The doctrine of equitable tolling does not apply to the IFQ application period in this case.

DISPOSITION

The Division's IAD denying the Appellant's application as untimely filed is **AFFIRMED**. This decision takes effect September 4, 1996, unless by that date the Regional Director orders review of the decision. Any party, including the Division, may submit a Motion for Reconsideration, but it must be received at this office not later than 10 days after the date of this decision, August 15, 1996.

³59 Fed. Reg. 701, at 702 (1994).

⁴George M. Ramos, Appeal No. 94-0008, Regional Director's Decision on Review, at 4, April 21, 1995; Charles J. Petticrew, Appeal No. 95-0008, July 3, 1996.

⁵John T. Coyne, Appeal No. 94-0012, May 24, 1996 (Decision on Reconsideration) .

Rebekah R. Ross
Appeals Officer

I concur in the factual findings of this decision and I have reviewed this decision to ensure compliance with applicable laws, regulations, and agency policies, and consistency with other appeals decisions of this office.

Randall J. Moen
Appeals Officer