



INTERIOR BOARD OF INDIAN APPEALS

Estate of Cato T. (Tomeo) Kamiakin

4 IBIA 132 (08/20/1975)



United States Department of the Interior

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

ESTATE OF CATO T. KAMIAKIN (TONEO)

IBIA 76-4

Decided August 20, 1975

Appeal from a decision denying petition for rehearing.

Docketed and Dismissed.

1. Indian Probate: Appeal: Timely Filing

The date the petition is received in the Department of the Interior, rather than the date it was mailed, controls.

APPEARANCES: Harry L. Johnsen of Colville Confederated Tribes Legal Services for Cynthia Kamiakin La Course, appellant.

OPINION BY ADMINISTRATIVE JUDGE WILSON

Cynthia Kamiakin La Course, hereinafter referred to as appellant, has filed with this Board an appeal from Administrative Law Judge Robert S. Snashall's denial of her petition for rehearing.

The probate record, received by this Board on July 30, 1975, indicates that the Judge issued and mailed his order denying petition for rehearing on May 15, 1975, together with a notice to appellant and other persons having an interest in the proceedings that the decision would become final sixty (60) days from May 15, 1975, unless a notice of appeal was filed within that period as prescribed by 43 CFR 4.290 *et seq.*

The record further indicates appellant's notice of appeal was mailed on July 14, 1975, and received in the Administrative Law Judge's office on July 15, 1975. Clearly, the notice of appeal was not timely filed, having been received in the office of the Judge on the 61st day.

The fact that the notice of appeal was mailed on the sixtieth day does not meet the filing requirements of 43 CFR 4.291 (a) which is interpreted and construed as jurisdictional.

[1] The date the petition is received in the Department of the Interior, rather than the date it was mailed, controls. Estate of Jack Fighter, IA-1346 (May 26, 1964), 71 I.D. 203.

For the reasons hereinabove set forth, the appeal of Cynthia Kamialkin La Course must be dismissed.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal of Cynthia Kamiakin La Course be, and the same is hereby DISMISSED.

This decision is final for the Department.

Done at Arlington, Virginia.

//original signed
Alexander H. Wilson
Administrative Judge

I concur:

//original signed
Mitchell J. Sabagh
Administrative Judge