



INTERIOR BOARD OF INDIAN APPEALS

Estate of James Edward French

37 IBIA 239 (05/07/2002)

Related Board cases:

36 IBIA 83

38 IBIA 132



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

ESTATE OF JAMES EDWARD FRENCH : Order Docketing and Dismissing Appeal
:
: Docket No. IBIA 02-95
:
: May 7, 2002

The Board of Indian Appeals (Board) has received a filing entitled "Notice of Appeal" from Appellant Judy French Baker. Appellant seeks review of a March 6, 2002, order issued by Attorney Decision Maker Ange Aunko Hamilton in the estate of Decedent James Edward French, Case No. AB-038-H-01-A. For the reasons discussed below, the Board docketed this appeal but dismisses it as premature.

This case arose as a summary distribution proceeding under 43 C.F.R. § 4.271 (2000). The Attorney Decision Maker issued a decision on January 31, 2001. At that time, summary distribution decisions were appealable to the Board. Appellant filed an appeal with the Board. In its March 20, 2001, decision in that appeal, the Board remanded the matter to the Attorney Decision Maker for further consideration. 36 IBIA 83 (2001). The March 6, 2002, decision was issued in response to the Board's remand.

New regulations governing probate decisions issued by the Bureau of Indian Affairs, including summary distributions, took effect on March 23, 2001, after the Board issued its decision in Appellant's first appeal. New 25 C.F.R. § 15.206 provides that summary distribution decisions may be appealed under 25 C.F.R. Part 15, Subpart E. 25 C.F.R. § 15.402 provides that notices of appeal from decisions issued by Attorney Decision Makers are to be filed with the Attorney Decision Maker who issued the decision. The Attorney Decision Maker is then responsible for referring the appeal to the appropriate Administrative Law Judge in the Office of Hearings and Appeals for review. See also 43 C.F.R. § 4.243. Under 43 C.F.R. § 4.320, decisions issued by Administrative Law Judges may be appealed to the Board.

The March 6, 2002, decision properly informed Appellant that any appeal was to be filed with the Attorney Decision Maker. Appellant filed her notice of appeal with both the Attorney Decision Maker and the Board. In response to the notice of appeal she received, on April 24, 2002, the Attorney Decision Maker forwarded the matter to Administrative Law Judge Marcel S. Greenia.

Appellant may be confused about the proper appeal process because of the change in the regulations, or may have filed her notice of appeal with both the Attorney Decision Maker and the Board out of an abundance of caution. In either case, the Board issues this decision in order to ensure that everyone concerned understands the appeal process.

Appellant's appeal is properly before the Administrative Law Judge. When he issues a decision, the Administrative Law Judge will notify the parties of their further right to appeal his decision to the Board. However, an appeal to the Board is premature at this time.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from the Attorney Decision Maker's March 22, 2002, decision is docketed but is dismissed without prejudice as premature.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge