



INTERIOR BOARD OF INDIAN APPEALS

Estate of Theresa Jeanette Covers up Yapuncich

38 IBIA 240 (12/11/2002)



United States Department of the Interior

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

ESTATE OF THERESA JEANETTE : Order Docketing and Dismissing
COVERS UP YAPUNCICH : Appeal
:
: Docket No. IBIA 03-12
:
: December 11, 2002

On October 18, 2002, the Board of Indian Appeals (Board) received materials from the Office of Administrative Law Judge Robert G. Holt indicating that, in August 2001, John Stephen Yapuncich (Appellant) had attempted to file an appeal in the estate of Theresa Jeanette Covers Up Yapuncich. An order denying petition for rehearing was entered in this estate by Administrative Law Judge William S. Herbert on June 29, 2001. For the reason discussed below, the Board docketed this appeal but dismisses it as untimely.

Judge Herbert has left the employ of the Department of the Interior. Judge Holt, who succeeded to some of Judge Herbert's cases, was asked about the status of the appeal by an interested party. Judge Holt asked his staff to look into the matter. Their investigation disclosed that the Crow Agency, Bureau of Indian Affairs, had received a copy of a notice of appeal, but did not receive anything from the Board about the appeal; and that Judge Herbert's former office had recently sent information concerning the estate to Judge Holt for permanent retention. Upon examining the materials sent to them, Judge Holt's staff found what appeared to be an original notice of appeal. They forwarded the notice of appeal and copies of relevant orders in the estate to the Board.

By order dated October 21, 2002, the Board gave Appellant an opportunity to show why the appeal should be accepted even though the Board did not receive the notice of appeal in or around August 2001 and received the notice that was sent to Judge Herbert well after the time period for filing an appeal. In order to assist Appellant in making the showing, the Board provided copies of several relevant decisions, including American Land Development Corp. v. Acting Phoenix Area Director, 25 IBIA 120, recon. denied, 25 IBIA 197 (1994); and Cole v. Billings Area Director, 28 IBIA 193 (1995).

The Board received Appellant's response on December 2, 2002. Appellant attempts to distinguish his situation by arguing that the Board's correct mailing address was shown on the

document and that “[i]t is the policy of the Crow office [of the Montana Legal Services Association] to mail correspondence and documents to the address that appears on the document or correspondence.” Nov. 25, 2002, Affidavit of Counsel at 1. In addition to the statement concerning office policy, counsel states only that he signed the notice of appeal and that it was subsequently mailed from the United States Post Office in Crow Agency, Montana. These statements are insufficient to support a conclusion that the notice of appeal was actually mailed to the Board.

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 is docketed but dismissed as untimely.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge