



INTERIOR BOARD OF INDIAN APPEALS

Estate of Manfred Kaulaity

40 IBIA 237 (02/09/2005)



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 MANFRED KAULAITY : Order Docketing and Dismissing
: Appeal
:
: Docket No. IBIA 05-35
:
: February 9, 2005

On February 7, 2005, the Board of Indian Appeals (Board) received a notice of appeal from Doris Kaulaity (Appellant). Appellant seeks review of a December 1, 2004, order denying rehearing entered by Indian Probate Judge George Tah-Bone in probate proceedings for the estate of Appellant's father, Manfred Kaulaity, deceased Kiowa Indian (Enrollment No. 802-U008190; Probate No. SP-802-00-179). The Board of Indian Appeals (Board) docketed the appeal, but dismisses it for lack of jurisdiction because it is untimely.

Judge Tah-Bone's order is dated December 1, 2004, and the certificate of mailing shows that it was mailed to the interested parties, including Appellant, the same day. ^{1/} The order states that "[a]ny appeal must be filed within 60 days," and provides correct instructions for sending an appeal to the Board. As shown by the postmark, Appellant mailed her notice of appeal to the Board on Tuesday, February 1, 2005, which was the 62nd day following December 1, 2004.

Section 4.320(b) of 43 C.F.R. provides that an appeal from an order denying rehearing must be filed "[w]ithin 60 days from the date of the decision." The 60-day deadline for filing an appeal is jurisdictional. *Id.* The effective date for filing a notice of appeal is the date of mailing or date of personal delivery. *Id.* § 4.310(a).

In this case, because Appellant filed her appeal on February 1, 2004, which was beyond the 60-day deadline for filing an appeal, her appeal must be dismissed.

^{1/} Appellant did not include with her notice of appeal a copy of the order from which she is appealing, but the Board separately obtained a copy from Judge Tah-Bone's office.

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 Board docketed this appeal, but dismisses it for lack of jurisdiction because it is untimely.

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Anita Vogt
Senior Administrative Judge