



## INTERIOR BOARD OF INDIAN APPEALS

Estate of Cordell Sun Bear

42 IBIA 92 (12/15/2005)



## 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 CORDELL SUN BEAR : Order Docketing and  
: Dismissing Appeal  
:  
: Docket No. IBIA 06-1  
:  
: December 15, 2005

The Superintendent of the Rosebud Agency, Bureau of Indian Affairs (Superintendent), on behalf of minor child Carson McCloskey, appealed to the Board of Indian Appeals (Board) from an order denying rehearing entered on September 16, 2005, by Administrative Law Judge (ALJ) Marcel S. Greenia in the estate of Cordell Sun Bear, deceased Oglala Sioux Indian, Probate No. IP GP 345 0114[\*]

Based on the information submitted with the notice of appeal, it appears that on June 2, 2005, Judge Greenia issued an order denying a petition for reopening that had been filed by Ms. Annie Little Elk, as legal custodian of Carson McCloskey-Sun Bear. That order advised interested parties that it would become final for the Department unless, within 60 days from the date the order was mailed — also June 2 — an appeal was filed with the Board. No appeal was filed within the 60-day time period, which expired on August 1, 2005.

However, by letter dated August 25, 2005 the Superintendent filed with Judge Greenia a request “for Rehearing,” which the Judge denied as untimely. The Superintendent appealed from that order to the Board.

On October 17, 2005, the Board issued an order for the Superintendent to show cause, on or before November 10, 2005, why the Board should not summarily dismiss the appeal as an untimely attempt to appeal Judge Greenia’s June 2, 2005 denial of reopening,

[\*So in original Board decision; should read IP GP 344 0114.]

which had stated that it would become final for the Department if no timely appeal was filed with the Board. 1/

The Board has received no response from the Superintendent.

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 failure to prosecute. 2/

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

\_\_\_\_\_  
// original signed  
David B. Johnson  
Acting Administrative Judge

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1/ In the alternative, the Board's show cause order noted that assuming a request for rehearing is even allowed from a denial of reopening — for which a direct right of appeal to the Board is provided by 43 C.F.R. § 4.320(a) — Judge Greenia's finding that the request for rehearing was untimely appeared to be correct because requests for rehearing are also governed by a 60-day deadline. Because we dismiss this appeal for failure to prosecute, we need not decide whether an ALJ has jurisdiction to consider a request for rehearing from a denial of reopening.

2/ The ALJ's denial of reopening was in response to a petition filed by Annie Little Elk, not one filed by the Superintendent. Although the Superintendent's *request for rehearing* may have been untimely or procedurally inappropriate, the Board's dismissal of this appeal for failure to prosecute is without prejudice to the Superintendent's authority to file a BIA *petition for reopening* with the ALJ pursuant to 43 C.F.R. § 4.242(e), 70 Fed. Reg. 11,821 (Mar. 9, 2005) (formerly § 4.242(d)) (manifest error), should he so choose.