



INTERIOR BOARD OF INDIAN APPEALS

WELSA Heirship Determination of Frank Albert/Ambrose Mason, Jr.

45 IBIA 127 (07/26/2007)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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WELSA HEIRSHIP	)	Order Dismissing Appeal and
DETERMINATION OF FRANK	)	Remanding Matter to the
ALBERT/AMBROSE MASON, JR.	)	Administrative Judge
	)	
	)	Docket No. IBIA 07-111
	)	
	)	July 26, 2007

The Superintendent of the Minnesota Agency, Bureau of Indian Affairs (Superintendent) has appealed to the Board of Indian Appeals (Board) from a Final Order Determining Heirs, dated May 30, 2007, and issued by Administrative Judge Thomas K. Pfister in the White Earth Reservation Land Settlement Act (WELSA) Heirship Determination of Frank Albert/Ambrose Mason, Jr. We dismiss this appeal without prejudice and remand the matter to Judge Pfister for consideration as a petition for reconsideration.

Under the WELSA regulations, a party aggrieved by a final order determining heirs may file a petition for reconsideration or rehearing with the administrative judge within 30 days after the date of mailing of the final order or, alternatively, the party may appeal directly to the Board within the same 30-day period. *See* 43 C.F.R. §§ 4.354(a) (petitions for reconsideration and/or rehearing), 4.356 (appeals to the Board).<sup>1</sup> The Board has held, however, that the regulations do not contemplate two simultaneous proceedings, and therefore only one forum may exercise jurisdiction at a given time. *WELSA Heirship Determination of Robert Lee Charbonneau*, 33 IBIA 168, 168 n.2 (1999).

In the present case, the Superintendent filed a timely notice of appeal with the Board on June 14, 2007, as evidenced by the postmark. *See* 43 C.F.R. § 4.310(a)(1). Five days later, and still within the 30-day time period, the Superintendent mailed a petition for

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<sup>1</sup> The Board has recognized that the Superintendent is a proper party to appeal a WELSA determination. *See WELSA Heirship Determinations of Thomas J. Shingobe and Esther Bellecourt Smith*, 31 IBIA 201, 205 (1997).

reconsideration to Judge Pfister.<sup>2</sup> On June 21, 2007, Judge Pfister properly dismissed the Superintendent's petition for reconsideration because he determined that the Superintendent's previously-filed appeal with the Board had divested him of jurisdiction over the matter. Order Dismissing Petition for Reconsideration for Lack of Jurisdiction, June 21, 2007; *see WELSA Heirship Determination of Robert Lee Charbonneau*, 33 IBIA at 168.

Under the circumstances of this case, and considering the structure of the WELSA regulations, we conclude it would be appropriate for the Board to dismiss this appeal without prejudice, and to remand the matter to Judge Pfister to allow him to consider the Superintendent's petition for reconsideration. The Superintendent's petition for reconsideration and his appeal to the Board are both based on new evidence, and are therefore particularly suitable for consideration by Judge Pfister in the first instance as a petition for reconsideration. *Compare WELSA Heirship Determination of Robert Fairbanks*, 38 IBIA 136, 137 (2002) (the Board ordinarily does not consider new evidence on appeal) *with* 43 C.F.R. § 4.354 (a WELSA petition for reconsideration based on newly discovered evidence must state justifiable reasons for the prior failure to discover and present the evidence). A remand to Judge Pfister will allow him to consider both the Superintendent's justification for failing to discover and present the evidence earlier, and if appropriate, to consider whether reconsideration of the final order is warranted based on that evidence.

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 dismisses this appeal without prejudice and remands the matter to Judge Pfister for consideration as a petition for reconsideration.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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// original signed  
Debora G. Luther  
Administrative Judge

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<sup>2</sup> The Superintendent's petition for reconsideration is dated June 14, 2007, and apparently he intended to mail it on June 14, although the petition received by Judge Pfister was mailed on June 19, 2007.