



INTERIOR BOARD OF INDIAN APPEALS

Estate of James Jones, Sr.

47 IBIA 36 (04/24/2008)

Subsequent history of this case:

Upper Skagit Indian Tribe v. Salazar, No. C08-0750-MJP (W.D. Wash.), Stipulated Dismissal, July 14, 2009, case remanded to Director of the Office of Hearings and Appeals (OHA)

Jurisdiction assumed by Director of OHA, 47 IBIA 36 vacated, and matter referred to the Board of Indian Appeals for further proceedings (Aug. 13, 2009)
Decision on referral, 51 IBIA 132



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF JAMES JONES, SR.) Order Docketing and Dismissing Appeal
))
) Docket No. IBIA 08-66
))
) April 24, 2008

On April 18, 2008, the Board of Indian Appeals (Board) received a Notice of Appeal (Appeal) and a Request for Rehearing (Request) from the Upper Skagit Indian Tribe (Tribe). The Notice and the Request were delivered to the Board by the Probate Hearings Division of the Office of Hearings and Appeals, Arlington, Virginia, which was the office to whom the documents were mailed. The Tribe seeks review of a February 15, 2008, Recommended Decision issued by Indian Probate Judge M.J. Stancampiano (IPJ) in the estate of James Jones, Sr. (Decedent), deceased Upper Skagit Indian, Probate No. P000000975IP, pursuant to the Board's standing order in *Estate of Douglas Leonard Ducheneaux*, 13 IBIA 169 (1985).¹ The Board docketed this appeal, but dismisses it for lack

¹ In *Ducheneaux*, the Board established a process by which alleged errors in the Bureau of Indian Affairs's (BIA) estate inventory are to be considered by a probate judge during a probate proceeding, rather than separately referring inventory questions to BIA for decision. 13 IBIA at 177-78; *see also Estate of Sandra Kay Bouttier LaBuff Heavy Gun*, 43 IBIA 143, 144 n.3 (2006). BIA participates as an interested party in the proceedings, and the probate judge issues a recommended decision regarding the inventory, which may then be appealed to the Board. *Estate of Samuel Johnson (John) Aimsback (Aims Back)*, 45 IBIA 298, 300 n.4 (2007).

The IPJ also issued an Order Determining Heirs on February 15, 2008, in which he ordered Decedent's estate distributed to his heirs under the laws of intestate succession of the State of Washington.

The Tribe's "Request for Rehearing" is limited to seeking supplementation of the record with respect to the Recommended Decision; it does not purport to seek rehearing from the Order Determining Heirs. The Board's *Ducheneaux* procedures do not provide for a right to seek rehearing with the probate judge on a recommended decision regarding the estate inventory. Because the Board, and not the IPJ, has jurisdiction over challenges to recommended decisions, *see Estate of Heavy Gun*, 43 IBIA at 144 n.3, the Board treats the Tribe's Appeal and Request collectively as an objection to and appeal from the Recommended Decision.

of jurisdiction because it was filed with the Board more than 60 days after the date that the IPJ's Recommended Decision was issued, and therefore the appeal is untimely.

Objections to a Recommended Decision as to a decedent's estate inventory must be filed *with the Board* within 60 days from the date of the IPJ's decision. See *Estate of Ducheneaux*, 13 IBIA at 178; 43 C.F.R. § 4.320(b). Untimely appeals will be dismissed. See 43 C.F.R. § 4.320(b); *Estate of Alvin Sherwood LeSage*, 46 IBIA 324 (2008).

The Recommended Decision² was issued on February 15, 2008, and therefore the Tribe had until April 15, 2008, to file its notice of appeal with the Board. The Notice attached to the IPJ's decision contained correct instructions for filing a notice of appeal *with the Board*, including the Board's complete address and the 60-day time limit for filing a notice of appeal. However, the Tribe did not file its Notice and Request with the Board, but instead mailed them to "Office of Hearings and Appeals, *Probate Hearings Division*, 801 N. Quincy St., Suite 300, Arlington, VA 22203," as evidenced by the mailing envelopes. Although the Probate Hearings Division promptly delivered the documents to the Board on April 18, 2008, by then the 60-day deadline had expired.³

The Board has consistently held that a notice of appeal is untimely when the appellant has been given correct appeal information but files a notice of appeal with an official other than the Board, resulting in receipt of the notice of appeal by the Board outside the time period specified in the regulations. *Estate of Arlen D. Houle*, 42 IBIA 253 (2006). When an appeal is properly mailed *to the Board*, the date of mailing is the date of filing with the Board. See 43 C.F.R. § 4.310(a)(1). However, an appellant who ignores explicit appeal instructions and mails its notice of appeal to the wrong office has not filed it with the Board, and bears the risks of delays in transmitting its notice of appeal to the

² The IPJ recommended that Decedent's estate inventory be modified to delete a 4.444% interest in Allotment No. 119-HC3869, which Decedent had inherited from the Estate of Marion Jones and the Estate of Solomon Jones. The IPJ concluded that Decedent had attempted to convey this interest to the Tribe, and that the conveyance was not completed due to a mistake by BIA. The IPJ also recommended against modification of Decedent's estate to exclude Decedent's interest in Allotment No. HC3900 and additional interests in 119-HC3869, which Decedent had inherited from his brother, William Jones. With respect to these interests, the IPJ concluded that the evidence was insufficient to establish that Decedent had actually attempted to effectuate conveyances of these interests.

³ The date that the documents were delivered to the Probate Hearings Division is not known. Probate Hearings Division staff were absent during part of the week of April 14, 2008, but promptly delivered the Tribe's documents to the Board upon their return.

Board. *Estate of Houle*, 42 IBIA at 254 n.1. In such circumstances, the notice of appeal must then be delivered to the Board, and the date of delivery becomes the effective date of filing. See 43 C.F.R. § 4.310(a)(1) (filing with Board is date of mailing or date of personal delivery)

Thus, we conclude that the Tribe's Appeal and Request are untimely. The Appeal and Request were incorrectly mailed to the Probate Hearings Division, which then delivered them to the Board on April 18, 2008. Because the Tribe's Notice and Request were filed with the Board after the 60-day appeal period had expired, the appeal must be dismissed.

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.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge