INTERIOR BOARD OF INDIAN APPEALS

Estate of Felix Bear Cloud

47 IBIA 255 (10/02/2008)

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 FELIX BEAR CLOUD	)	Order Docketing and Dismissing
	)	Appeal
	)	
	)	Docket No. IBIA 08-112
	)	
	)	October 2, 2008

On July 18, 2008, the Board of Indian Appeals (Board) received a notice of appeal from Karmelita Plains Bull Martin (Appellant), seeking review of an Order Denying Reopening entered by Indian Probate Judge Albert C. Jones (IPJ) on April 25, 2008, in the estate of Appellant's grandfather, Felix Bear Cloud, deceased Crow Indian, Probate No. 57816-34. The Order Denying Reopening let stand an Order Determining Heirs, dated April 16, 1936, in which Bear Cloud's surviving spouse, Horses on the Other Side, inherited a 1/3 interest in Bear Cloud's estate, and the remaining 2/3 interest descended in equal shares to Bear Cloud's four surviving children (including Appellant's mother, Mary Elizabeth Bear Cloud) and one grandchild, each of whom inherited a 2/15 interest.

The Board dockets the appeal, but dismisses it for lack of jurisdiction. Appeals from decisions on reopening must be filed within 60 days after the date of the decision, Appellant's notice of appeal was filed after that deadline expired, and Appellant failed to respond to the Board's order to show cause why her appeal should not be dismissed as untimely.

Appeals from orders on reopening must be filed "[w]ithin 60 days from the date of the decision." 43 C.F.R. § 4.320(b). The 60-day deadline for filing an appeal is jurisdictional. *See id.* § 4.320(b)(3). Untimely appeals must be dismissed. *Estate of Charles Bernard Little Nest*, 47 IBIA 52 (2008); *Estate of Alvin Sherwood LeSage*, 46 IBIA 324 (2008).

The IPJ's decision was issued on April 25, 2008, and therefore Appellant had 60 days from that date, or until June 24, 2008, to file her appeal. The notice of appeal received by the Board was filed on July 16, 2008, as shown by the postmark on the envelope in which Appellant mailed it to the Board. *See* 43 C.F.R. § 4.310(a)(1). Because the date of filing was more than 60 days after the date of the IPJ's decision, the Board ordered Appellant to show cause, on or before August 22, 2008, why her appeal should not be dismissed as untimely. The Board also ordered Appellant to serve interested parties with

her notice of appeal, as required by 43 C.F.R. § 4.320(c), and to certify to the Board that she had done so.

The Board has received no response from Appellant. The Board did receive correspondence from another interested party, enclosing copies of two letters, one dated August 19, 2008, and the other August 20, 2008, which apparently were sent by Appellant to the United States Senate Judiciary Committee regarding the Board's show cause order. Nothing in these letters provides a basis for us to find that Appellant's appeal is timely.

The Board finds that, even excusing Appellant's failure to respond directly to the show cause order, and considering the letters that Appellant sent to the Senate Judiciary Committee, Appellant has failed to demonstrate that her appeal was timely. The date of filing, July 16, 2008, is outside the 60-day time period that was triggered on April 25, 2008, when the IPJ issued the Order Denying Reopening.[1]

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 dockets this appeal, but dismisses it for lack of jurisdiction because it is untimely.[2]

I concur:

// original signed	// original signed
Steven K. Linscheid	Debora G. Luther
Chief Administrative Judge	Administrative Judge

[1] The Board also received a document from several individuals who identify themselves as descendants of Bear Cloud, which is styled both as a "Notice of Appeals" and request for "Continuance" regarding Appellant's appeal. The continuance is sought for the purpose of seeking legal counsel. The submission is postmarked August 25, 2008. To the extent it was intended as a new notice of appeal, in addition to supporting Appellant's appeal, the Board finds that this submission is untimely and declines to docket it separately.

[2] Because we are dismissing the appeal as untimely, we do not rely on Appellant's failure to complete service as grounds for dismissal. We note that even if the appeal were timely, several of her claims or requests for relief (e.g., request for an audit of the Bureau of Indian Affairs Crow Agency Office; claim that the rights of individual Crow land owners are being violated; complaints regarding Crow Tribe government), pertain to non-probate matters, and therefore would be outside the scope of this appeal.