



INTERIOR BOARD OF INDIAN APPEALS

Estate of Clarence George Whitegrass

51 IBIA 1(12/03/2009)



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 CLARENCE GEORGE) Order Docketing and Dismissing Appeal
WHITEGRASS)
) Docket No. IBIA 09-142
)
)
) December 3, 2009

Debbie White Grass Bull Shoe (Bull Shoe), on behalf of herself and several heirs (collectively, Appellants),¹ seeks review of an Order Denying Rehearing, entered on August 19, 2009, by Indian Probate Judge (IPJ) Albert C. Jones in the estate of Bull Shoe's father, Clarence George Whitegrass (Decedent), deceased Blackfeet Indian, Probate No. P000048316IP. The Order Denying Rehearing let stand a January 13, 2009, Decision, in which Decedent's estate passed by intestacy to his heirs pursuant to the terms of the American Indian Probate Reform Act (AIPRA), 25 U.S.C. § 2206(a). We docket this appeal but dismiss it as untimely because the IPJ provided accurate instructions for filing an appeal with the Board, and this appeal was not filed with the Board within the 30-day deadline following the IPJ's Order Denying Rehearing.

An appeal from a probate judge's decision denying rehearing must be filed with the Board within 30 days after the decision was mailed with accurate appeal instructions. 73 Fed. Reg. 67,256, 67,288 (Nov. 13, 2008) (eff. Dec. 15, 2008), *to be codified at* 43 C.F.R. § 4.321(a). An appeal that is not filed by the 30-day deadline will be dismissed. *Id.*; *Estate of Daniel Temartz Sampson*, 49 IBIA 207, 208 (2009).

In the present case, the IPJ's Order Denying Rehearing was accompanied by a notice that contained accurate appeal instructions, including the deadline for filing an appeal and the Board's address. The notice included a certification that the order and notice were mailed on August 19, 2009. Therefore, the 30-day appeal period expired on September 18, 2009. Appellants' Notice of Appeal is postmarked September 28, 2009, 10 days later. *See*

¹ The following heirs signed the Notice of Appeal: Decedent's widow Karola Whitegrass; four of Decedent's children, Bull Shoe, Faron WhiteGrass, Sr., Memory Whitegrass Kittson, and Annette WhiteGrass; and five of Decedent's grandchildren, Caroline Belcourt, Tammy Belcourt, Julius Whitegrass, Travis Whitegrass, and Clifford WhiteGrass. The five grandchildren are the children of two of Decedent's children who predeceased him.

43 C.F.R. § 4.310(a)(1) (the date of filing is the date of mailing). No extensions of time may be granted for filing a notice of appeal. *Id.* § 4.310(d)(1).

Appellant Bull Shoe claims that a BIA employee informed her that appellants are permitted a “grace period of fifteen days” beyond the 30-day appeal deadline “to send . . . correspondence to the Board.” Cover letter to Notice of Appeal, Sept. 28, 2009. Assuming that the BIA employee was referring to notices of appeal, any such instruction is inaccurate. 43 C.F.R. § 4.310(d)(1). An appellant who fails to follow *correct* appeal instructions — such as those included by the probate judge with the Order Denying Rehearing — bears the risk that the appeal will not be timely filed. *See Sampson*, 49 IBIA at 208, and cases cited therein.² Because Appellants’ appeal was not timely filed with the Board, we dismiss the appeal.

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 as untimely.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge

² Even assuming that a BIA employee told Bull Shoe that she had an extra 15 days to file her appeal, the Government is not bound by the unauthorized acts of its employees nor can unauthorized acts by BIA employees or erroneous information furnished by them serve as the basis for conferring rights not authorized by law. *See Emm v. Western Regional Director*, 50 IBIA 311, 318 (2009), and cases cited therein.