



INTERIOR BOARD OF INDIAN APPEALS

Lisa Nicholson-True v. Colville Agency Superintendent, Bureau of Indian Affairs

55 IBIA 137 (06/22/2012)

Related Board cases:

51 IBIA 126

55 IBIA 1



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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LISA NICHOLSON-TRUE,)	Order Docketing and Dismissing
Appellant,)	Appeal
)	
v.)	
)	Docket No. IBIA 12-118
COLVILLE AGENCY)	
SUPERINTENDENT, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	June 22, 2012

On June 6, 2012, the Board of Indian Appeals (Board) received a notice of appeal from Lisa Nicholson-True (Appellant). Appellant seeks review of an April 19, 2012, letter from the Colville Agency Superintendent (Superintendent), Bureau of Indian Affairs (BIA), responding to correspondence from Appellant regarding two inventory disputes involving the estate of her father, John Henry Nicholson (Decedent).¹ In reference to the dispute involving Allotment 101-T3514 (Allotment T3514), the Superintendent stated that BIA’s Northwest Regional Director (Regional Director) issued a decision on April 9, 2010, finding that Allotment T3514 was correctly excluded from Decedent’s trust estate inventory.² In reference to the dispute involving the Josephine Nicholson Allotment, No. 101-889 (Allotment 889), the Superintendent noted that Appellant had a pending appeal to the Board from a December 17, 2009, decision, in which the Regional Director confirmed that two portions of original Allotment 889 were no longer part of Decedent’s trust estate inventory. Subsequently, on May 1, 2012, the Board affirmed the Regional Director’s December 17 decision regarding Allotment 889. *See Nicholson-True v. Acting Northwest Regional Director*, 55 IBIA 1 (2012).

Appellant’s notice of appeal asks that we “reverse” the Superintendent’s “decision.” Notice of Appeal at 1. But as we explain, we have no jurisdiction over an appeal from an action by the Superintendent, regardless of how his correspondence is characterized. And

¹ Decedent was a Colville Indian; his estate was assigned Probate No. P000078355IP.

² The Superintendent explained that the Regional Director’s decision concerning Allotment T3514 became effective and final for the Department when no appeal was filed.

even if we were to construe Appellant’s notice of appeal as seeking reconsideration of our decision in *Nicholson-True* regarding Allotment 889, we would still lack jurisdiction because the time for seeking reconsideration expired before Appellant filed her notice of appeal.

The Board’s jurisdiction is limited to the authority vested in it by regulation or otherwise delegated to it by the Secretary of the Interior. *See* 43 C.F.R. § 4.1(b)(1); *State of California v. National Indian Gaming Commission*, 44 IBIA 22, 22 (2006). With exceptions not relevant here, the Board lacks jurisdiction to review action by a BIA superintendent. *See Marruffo v. Southern California Agency Superintendent*, 53 IBIA 276, 277 (2011) (dismissing appeal); *Gardner v. Uintah and Ouray Agency Superintendent*, 51 IBIA 166, 167 (2010) (same). Therefore, the Board lacks jurisdiction to consider an appeal from the Superintendent’s letter.

To the extent that Appellant seeks to reassert her challenge regarding Allotment 889, the Board’s decision in *Nicholson-True* is final for the Department of the Interior. In addition, petitions for reconsideration of a Board decision “must be filed with the Board within 30 days from the date of the [Board’s] decision.” 43 C.F.R. § 4.315(a). Thus, the time for Appellant to file a petition for reconsideration of *Nicholson-True* expired on May 31, 2012. Appellant filed this appeal with the Board on June 4, 2012, as shown by the date of the postmark. *See* 43 C.F.R. § 4.310(a) (date of mailing is date of filing). Accordingly, even if the Board construes this appeal as seeking reconsideration of our decision regarding Allotment 889, it still must be dismissed as untimely. *See Alturas Indian Rancheria v. Pacific Regional Director*, 54 IBIA 138, 145 (2011) (the Board lacks jurisdiction to consider untimely petitions for reconsideration).

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 but dismisses this appeal for lack of jurisdiction.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Debora G. Luther
Administrative Judge