



INTERIOR BOARD OF INDIAN APPEALS

Estate of Jesse J. James

8 IBIA 293 (05/27/1981)

Denying reconsideration of:
8 IBIA 205



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF JESSE J. JAMES : Order Denying Petition for
Deceased Burns-Paiute 144-N1116 : Reconsideration or Reopening
: :
: Docket No. IBIA 80-48-E (Supp)
: :
: May 27, 1981

By correspondence dated May 18, 1981, received by the Board of Indian Appeals on May 26, 1981, Ruth Hoodie (Lewis) Abel, Wallace Hoodie and Leon Hoodie submit argument, based on alleged new evidence, that they are the lawful heirs at law of Jesse J. James. The foregoing letter is hereby treated as a petition for reconsideration of a prior Board decision or, in the alternative, as a petition for the reopening of decedent's estate.

New procedural regulations governing practice before the Board of Indian Appeals were published January 23, 1981. See 46 Fed. Reg. 7334 (1981). Section 4.315 of these new rules, to be codified in Volume 43, Code of Federal Regulations, pertains to reconsideration procedures. Among other things, section 4.315 provides that reconsideration of a Board decision will be granted "only in extraordinary circumstances" and that such a petition "must be filed with the Board within 30 days from receipt of the decision."

In the first place, there has never been a Board decision on the question of whether the petitioners herein are lawful heirs of the deceased. A departmental determination to the effect that they are not lawful heirs of the decedent was entered by Administrative Law Judge Robert C. Snashall on May 30, 1980. In a notice accompanying this determination, all parties were advised of their right to appeal the decision to the Board of Indian Appeals within 60 days from the date of the decision. On June 26, 1980, the Board issued a special notice to all parties reminding them that the opportunity to challenge Judge Snashall's heirship order would expire July 30, 1980. The foregoing deadline for the filing of an appeal passed without any appeal being filed. By operation of law, Judge Snashall's heirship determination of May 30, 1980, therefore became final for the Department. See 43 CFR 4.22(f).

The only decision entered in the Estate of Jesse J. James by the Board is its opinion of December 8, 1980, regarding the claim of the Burns-Paiute Tribe that it should receive decedent's trust property by escheat.

Assuming, in the light most favorable to petitioners, that the Board's order of December 8, 1980, included findings and conclusions regarding their right to decedent's trust land, the request for recon-

sideration of the decision is not timely. It has been nearly 6 months since the date of the Board's decision, far in excess of the 30 days required for reconsideration requests under the Board's rules.

Petitioners also lack standing to request that the subject estate be reopened. The reopening procedures of the Department in Indian heirship matters are set forth in 43 CFR 4.242. A party who had actual notice of the original probate proceedings is ineligible to request reopening. 43 CFR 4.242(a). The record in this case reflects that all petitioners herein received actual notice of the original proceedings and participated in the proceedings.

Based on the foregoing, petitioners' request for reconsideration of the final heirship determination in this estate is denied. Petitioners' request that the Jesse J. James estate be reopened is also denied. Pursuant to the authority delegated the Board under 43 CFR 4.1, this decision is final for the Department.

//original signed

Wm. Philip Horton
Chief Administrative Judge

I concur:

//original signed

Franklin Arness
Administrative Judge