



INTERIOR BOARD OF INDIAN APPEALS

Estate of Louis L. Messerly, Sr.

42 IBIA 214 (02/10/2006)



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 LOUIS L. MESSERLY, SR. : Order Dismissing Appeal
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: Docket No. IBIA 05-96
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:
: February 10, 2006

Kathleen Marie Horseman (Appellant) filed an appeal from an Order Granting Reopening and Modifying Decision entered on August 10, 2005, by Administrative Law Judge Robert G. Holt in the estate of Louis L. Messerly, Sr., deceased Fort Belknap Indian, Probate No. SL-104-F-98. The Board dismisses this appeal for failure to prosecute.

Appellant's notice of appeal did not indicate that she had served copies of it on all interested parties, as required by 43 C.F.R. § 4.320(c). On September 1, 2005, the Board issued an order requiring Appellant to serve all interested parties with a copy of her notice of appeal and to certify to the Board that she had done so. The Board mailed its September 1, 2005 order to Appellant at the address shown on her notice of appeal, but it was returned to the Board as "Unclaimed."

On October 11, 2005, the Board issued a Second Order to Serve, enclosing the September 1, 2005 order and requiring Appellant, on or before November 30, 2005, to comply with the service requirements. The Board advised Appellant that failure to respond could result in dismissal of this appeal without further notice. The Board's October 11, 2005 order was not returned, and therefore it appears that it was received by Appellant or accepted by someone at Appellant's mailing address.

The Board has received no response from Appellant.

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 dismisses this appeal for failure to prosecute. 1/

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Amy B. Sosin
Acting Administrative Judge

1/ Appellant's notice of appeal stated that she is a truck driver and is frequently away from home. In addition to providing a mailing address, the notice of appeal provided a cell phone number to contact Appellant. Upon dialing the cell phone number to determine whether Appellant had received the Board's October 11, 2005 order, the Board received a message that the number is not a working number.