



INTERIOR BOARD OF INDIAN APPEALS

Estate of Harry Joseph Blue Thunder, Sr.

47 IBIA 168 (08/05/2008)

Denying reconsideration of:  
47 IBIA 115



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ESTATE OF HARRY JOSEPH BLUE ) Order Denying Reconsideration  
THUNDER, SR. )  
)  
) Docket No. IBIA 08-61  
)  
)  
) August 5, 2008

On June 24, 2008, the Board of Indian Appeals (Board) dismissed an appeal filed by Marie Black Lance (Appellant), for failing to respond to an order issued by the Board on April 23, 2008. 47 IBIA 115. That order required Appellant to show cause, on or before May 14, 2008, why her appeal should not be dismissed as untimely since it was filed more than 60 days after the February 1, 2008, Order Denying Rehearing in the estate of Appellant's father, Harry Joseph Blue Thunder, Sr. *See* 43 C.F.R. § 4.320(b) (appeals to the Board in probate matters must be filed within 60 days of the date of the decision). In addition, the Board's April 23 Order required Appellant to send a copy of her notice of appeal to all interested parties and to file a statement with the Board by May 14 that she had done so. The Board also advised Appellant in the April 23 Order that failure to comply with the order could result in dismissal of her appeal without further notice. The Board did not receive any response from Appellant and, thus, her appeal was dismissed on June 24 for failure to prosecute.

On June 26, 2008, the Board received a letter dated June 20, 2008, from Appellant in which she explained that she "didn't understand what was requested" in the Board's April 23 Order and she "can't afford to hire an attorney." She further stated that she had been trying, since July 2007, to obtain her family history from the St. Francis Mission and the Bureau of Indian Affairs (BIA). She enclosed a copy of her letter to BIA and represented that she has not heard from either St. Francis Mission or BIA. She did not address the apparent untimeliness of her appeal. On July 3, 2008, the Board responded to Appellant's letter and advised that her appeal had been dismissed but that she still had time to seek reconsideration, if she wished to do so.

Subsequently, the Board received a letter dated July 24, 2008, from Appellant, which the Board construes as a petition for reconsideration, or in the alternative as an attempt to file a new appeal from the same Order Denying Rehearing that she previously

sought to appeal.<sup>1</sup> Again, this letter did not address or explain how her earlier appeal to the Board could be considered timely. Additionally, Appellant did not confirm that she served a copy of her original notice of appeal on the parties. Instead, she confirmed that she served a copy of her June 20 and July 24 letters on the parties and she discusses the underlying merits of her case.

Reconsideration of a decision of the Board will be granted only in extraordinary circumstances. 43 C.F.R. § 4.315(a); *Estate of Robert Henry Moran, Sr.*, 45 IBIA 26 (2007). Subsection 4.315(a) requires any party petitioning for reconsideration to provide “a detailed statement of the reasons why reconsideration should be granted.”<sup>2</sup>

Neither the June 20 or the July 24 letter sets forth any basis for us to reconsider our dismissal of Appellant’s appeal. Although Appellant’s June 20 letter provides some explanation for her failure to comply with our April 23 Order — she did not understand what she was to do — we have reviewed our April 23 Order and find that it stated in plain terms that Appellant was expected to respond to the Board by May 23, explain why her appeal should not be dismissed as untimely, and confirm that she had served her original notice of appeal on the appropriate parties. The Board did not hear from Appellant until June 26, 2008. Even assuming that Appellant did not understand exactly what she needed to show or explain by the May 23 deadline, she should have at least responded by that date and sought clarification of the Board’s order. She did not do so.

Appellant’s July 24 letter does not directly address Appellant’s first appeal, nor does it attempt to argue that the Board’s earlier dismissal of this appeal was in error. Instead, Appellant requests that the letter be treated as a new appeal from the Order Denying Rehearing. This letter does not provide any grounds for reconsideration, and if we were to treat it as a new appeal, we would be required to dismiss it as untimely. *See* 43 C.F.R. § 4.320(b). The 60-day deadline for filing an appeal is jurisdictional, *id.* § 4.320(b)(3), *Estate of Edward Benedict Defender*, 44 IBIA 8 (2006), and untimely appeals will be dismissed, *see* 43 C.F.R. § 4.320(b)(3), *Estate of Mary Jo (Mosho) Estep*, 44 IBIA 18 (2006).

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<sup>1</sup> The letter was postmarked on July 24, 2008, the 30th day after the Board’s June 24 Order Dismissing Appeal, and therefore it is timely as a petition for reconsideration. *See* 43 C.F.R. § 4.315(a).

<sup>2</sup> A copy of the regulations, including section 4.315, was provided to Appellant and all interested parties with the Board’s April 23 Order.

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 denies reconsideration of 47 IBIA 115.

I concur:

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// original signed  
Debora G. Luther  
Administrative Judge

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge