



INTERIOR BOARD OF INDIAN APPEALS

Estate of Daniel Temartz Sampson

49 IBIA 207 (05/07/2009)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
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ESTATE OF DANIEL TEMARTZ)
SAMPSON)
)
)
) Docket Nos. IBIA 09-073,
) 09-075 through
) 09-079
)
)
) May 7, 2009

On May 1, 2009, the Board of Indian Appeals (Board) received a memorandum from Administrative Law Judge (ALJ) Steven R. Lynch, transmitting to the Board a notice of appeal from Gerald Sampson, Sr., seeking review of an Order Reopening and Modifying Decision (Order on Reopening), entered on March 16, 2009, by the ALJ in the estate of Daniel Temartz Sampson (Decedent), deceased Yakama Indian, Probate No. P000000647IP. On May 4, 2009, the Board received five additional notices of appeal — all substantively identical to the one from Gerald Sampson, Sr. — signed by Audrey G. Sampson Olney; Theodore Sampson; Bruce Sampson, Sr.; Beatrice Tillequots; and Annette Sampson.¹ The ALJ's order reopened the estate at the request of the Yakama Agency (Agency), Bureau of Indian Affairs, on the ground that Decedent's Individual Indian Money (IIM) account included Yakama tribal per capita payments made after Decedent's death, which should not have been deposited in the account.² We docket these appeals but

¹ The additional five appeals were sent to the Board by Audrey Sampson Olney. All six individuals (Appellants) are children of Decedent.

² An Order Determining Heirs, entered on March 18, 2008, found that Decedent died on October 30, 1994, at the time of his disappearance. The Agency sought reopening because the tribal per capita payments were made and deposited in Decedent's IIM account after that date. The ALJ declined to consider as conclusive a revised death certificate submitted by Audrey Sampson Olney, which reflected a new date of death, October 17, 2001. The ALJ concluded that the 2001 date was based on a Washington State law, under which the fact of death may be presumed, and an estate distributed, after an unexplained absence of seven years, under certain circumstances. Even considering that law as persuasive authority, the ALJ concluded that the date of death is still a question of fact, and that the evidence in this case supported his earlier factual finding that Decedent's disappearance was caused by his death on or near the date of his disappearance on October 30, 1994.

dismiss them as untimely because the ALJ provided accurate instructions for filing an appeal with the Board, and these appeals were not filed with the Board within the 30-day deadline following the ALJ's Order on Reopening.

Under the Department of the Interior's probate regulations, 73 Fed. Reg. 67,288 (Nov. 13, 2008) (to be codified at 43 C.F.R. § 4.321(a)), an appeal from a probate judge's decision must be filed with the Board within 30 days after the decision was mailed with accurate appeal instructions. Any appeal that is not filed by the 30-day deadline will be dismissed. *Id.* In the present case, the ALJ's Order on Reopening was accompanied by a notice containing accurate appeal instructions providing the deadline for filing an appeal and the Board's address. The notice includes a certification that the order and notice were mailed on March 16, 2009. Therefore, the time for filing an appeal expired on April 15, 2009.

Gerald Sampson, Sr. sent his appeal to the ALJ, who transmitted it to the Board, where it was received on May 1, 2009. The appeals received from Audrey Sampson Olney were filed on April 30, 2009, when she mailed them to the Board. None of the appeals was filed with the Board within the 30-day deadline. *See* 43 C.F.R. § 4.310(a) (date of filing is the date of mailing or date of personal delivery). An appellant who fails to follow accurate appeal instructions bears the risk that the appeal will not be timely filed. *See Castillo v. Pacific Regional Director*, 43 IBIA 9, 10 (2006), and cases cited therein.

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 these appeals³ but dismisses them as untimely.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

³ The appeals are docketed as follows: Gerald Sampson, Sr. (No. IBIA 09-073); Audrey G. Sampson Olney (No. IBIA 09-075); Theodore Sampson (No. IBIA 09-076); Bruce Sampson, Sr. (No. IBIA 09-077); Beatrice Tillequots (No. IBIA 09-078); and Annette Sampson (No. IBIA 09-079).