



INTERIOR BOARD OF INDIAN APPEALS

Estate of Beatrice Pollard

50 IBIA 131 (08/13/2009)



# 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 BEATRICE POLLARD     )     Order Docketing and Dismissing Appeal  
  )       
  )     Docket No. IBIA 09-117  
  )       
  )     August 13, 2009

On July 14, 2009, the Board of Indian Appeals (Board) received a memorandum from Attorney Advisor John Payne, with which he delivered a notice of appeal from Cheryl Lohman (Appellant). On behalf of herself and her three siblings, Appellant sought review of an Order Reopening Case and Modifying Probate Decision (Order on Reopening), entered on June 12, 2009, by Administrative Law Judge (ALJ) Thomas F. Gordon in the estate of Appellant's mother, Beatrice Pollard (Decedent), deceased Paiute (Fort Bidwell Community), Probate No. P-00001-6740-IP. The ALJ's order reopened the estate at the request of the Northern California Agency, Bureau of Indian Affairs (BIA), on the ground that Decedent's allotment interests and most, if not all, of the funds in her Individual Indian Money account should have passed pursuant to Oregon law, not California law, as described in an October 23, 2006, Order Determining Heirs. We docket this appeal but dismiss it as untimely because the ALJ provided accurate instructions for filing an appeal with the Board, and this appeal was 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. 67,256, 67,288 (Nov. 13, 2008) (eff. Dec. 15, 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.*; *Estate of Daniel Temartz Sampson*, 49 IBIA 207, 208 (2009). In the present case, the ALJ's Order on Reopening was accompanied by a notice that contained accurate appeal instructions, including the deadline for filing an appeal and the Board's address. The notice included a certification that the order and notice were mailed on June 12, 2009. Therefore, the time for filing an appeal expired on July 13, 2009.<sup>1</sup>

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<sup>1</sup> Appellant gained an extra day to submit her appeal inasmuch as the 30<sup>th</sup> day after the date of the Order on Reopening, July 12, fell on a Sunday. Pursuant to 43 C.F.R. § 4.310(c),  
(continued...)

Appellant sent her appeal to the Office of Hearings and Appeals in Sacramento, California, but failed to send it to the Board. The Sacramento office delivered Appellant's appeal to the Board, where it was received on July 14, 2009. Thus, the appeal was not 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), and “[w]e will dismiss any appeal not filed by this deadline,” *see* 73 Fed. Reg. at 67,288, *to be codified at* 43 C.F.R. § 4.321(a). 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 this appeal but dismisses it as untimely.<sup>2</sup>

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

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<sup>1</sup>(...continued)

where the last day for filing falls on a non-business day (Saturday, Sunday, or Federal holiday), the filing date is extended to the next business day. *Estate of Alvin Sherwood LeSage*, 46 IBIA 324, 325 (2008). Therefore, the deadline for Appellant to file her appeal with the Board was extended to Monday, July 13.

<sup>2</sup> To the extent that part or all of Appellant's appeal is directed at title records, probate records, and other historical information concerning the descent of two allotments — Allotment Nos. 34 and 44, located on or near the Burns Paiute Indian Reservation in Oregon — she should contact BIA's Warm Springs Agency or Northwest Regional Office.