



INTERIOR BOARD OF INDIAN APPEALS

The Direct Lineal Descendants of Rosie Jack and Wagon Jack; Marion Gayle nee Sanders Miles, Nancy Laura nee Sanders Stewart, Jody Faye White, Jody Faye White as Administrator of the Estate of Jesse Wayne White, and William Edward White v. Acting Assistant Secretary - Indian Affairs

58 IBIA 85 (11/04/2013)



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

THE DIRECT LINEAL DESCENDANTS)	Order Docketing and Dismissing
OF ROSIE JACK AND WAGON JACK;)	Appeal
MARION GAYLE nee SANDERS MILES,)	
NANCY LAURA nee SANDERS)	
STEWART, JODY FAYE WHITE, JODY)	
FAYE WHITE as Administrator of the)	
Estate of JESSE WAYNE WHITE, AND)	
WILLIAM EDWARD WHITE,)	Docket No. IBIA 14-012
Appellants,)	
)	
v.)	
)	
ACTING ASSISTANT SECRETARY –)	
INDIAN AFFAIRS,)	
Appellee.)	November 4, 2013

On September 27, 2013, the Board of Indian Appeals (Board) received a notice of appeal from The Direct Lineal Descendants of Rosie Jack and Wagon Jack; Marion Gayle nee Sanders Miles, Nancy Laura nee Sanders Stewart, Jody Faye White, Jody Faye White as Administrator of the Estate of Jesse Wayne White, and William Edward White (Appellants), through Treva J. Hearne, Esq.¹ Appellants seek review of two decisions of the Acting Assistant Secretary – Indian Affairs (Assistant Secretary) regarding the blood quantum of descendants of Rosie Jack and Wagon Jack. *See* Notice of Appeal at 2.

In a decision dated June 21, 2012, and another dated September 18, 2012, the Assistant Secretary concluded that Appellants William Edward White and Nancy Laura Sanders Stewart, respectively, are not eligible to be included on the distribution roll of descendants for payment from the Western Shoshone Claims Distribution Act, Pub. L. No. 108-270, 118 Stat. 805 (July 7, 2004), because they do not have at least 1/4 degree Western Shoshone blood. *See* Notice of Appeal, Record on Appeal at 1-4 (unnumbered). Each decision states that it is issued pursuant to 25 C.F.R. §§ 61.13 (Assistant Secretary’s

¹ The Board has captioned the appeal and identified Appellants based on their identification of the appeal. It is not clear whether counsel for Appellants purports to represent, or bring the appeal on behalf of, individuals other than the five Appellant-individuals (including Jesse Wayne White, deceased) identified in the caption to the appeal.

decision in judgment fund roll appeals) and 62.11 (action by Assistant Secretary in enrollment appeals), and is final for the Department of the Interior (Department). We docket this appeal, but dismiss it for lack of jurisdiction.

The Board's jurisdiction is limited to the authority vested in it by regulation or otherwise delegated to it by the Secretary of the Interior. *See* 43 C.F.R. § 4.1(b)(1); *State of California v. National Indian Gaming Commission*, 44 IBIA 22, 22 (2006). With exceptions not relevant here, the Board has not been granted jurisdiction to review administrative action by the Assistant Secretary, *see* 25 C.F.R. § 2.4(e), and the regulations governing the eligibility determinations for the Western Shoshone Claims Distribution Act expressly provide that a decision by the Assistant Secretary is final and conclusive, *id.* § 61.11–.13. That means there is no further right of appeal within the Department from the Assistant Secretary's decisions in this matter, including an appeal to the Board. *Atkins v. Assistant Secretary*, 54 IBIA 194, 194 (2012).

The notice of appeal refers only to a determination or decision made by the "Assistant Secretary," Notice of Appeal at 2, 7, but Appellants do not identify any decision or decisions of the Assistant Secretary concerning the eligibility of Marion Gayle Sanders Miles, Jody Faye White, or Jesse Wayne White. It appears that the Western Regional Director (Regional Director), Bureau of Indian Affairs, concluded that these individuals also do not have at least 1/4 degree Western Shoshone blood, and it appears that they subsequently filed appeals with the Regional Director. *See* Notice of Appeal, Record on Appeal, at 51-57, 61-63, 77-82 (unnumbered). Even assuming that the Assistant Secretary has not yet issued decisions for these appellants, and assuming that they seek Board review of the Regional Director's decisions, we lack jurisdiction because the Board is not part of the appeals process for Western Shoshone judgment fund enrollment determinations or for enrollment appeals. *See* 25 C.F.R. §§ 61.4(k), 61.11–.13, and 62.10–.11; *Mease v. Secretary of the Interior*, 52 IBIA 237, 238 n.3 (2010) (Board is not part of the appeals process under Part 62).

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 but dismisses this appeal.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge