



INTERIOR BOARD OF INDIAN APPEALS

Estate of Cecelia M. Eli

59 IBIA 109 (08/25/2014)



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 CECELIA M. ELI)	Order Docketing and Dismissing
)	Appeal
)	
)	Docket No. IBIA 14-090
)	
)	August 25, 2014

On May 5, 2014, the Board of Indian Appeals (Board) received a notice of appeal from Simon O. Eli (Appellant) in the estate of Appellant’s mother, Cecelia M. Eli (Decedent).¹ Appellant filed the appeal in response to a February 28, 2014, Modification to Add and Distribute Property (Modification Order) issued by Administrative Law Judge (ALJ) Thomas F. Gordon in the probate of Decedent’s estate. The Modification Order granted a petition for reopening by the Yakama Agency Superintendent, Bureau of Indian Affairs (BIA), to add to Decedent’s estate and distribute certain property interests² that are located on the Warm Springs Reservation in the State of Oregon.³ We docket but dismiss this appeal because a subsequent clarification from Appellant indicates that he did not intend to challenge, i.e., appeal from, the Modification Order as erroneous, but instead only sought to understand the order. Even without the clarification, we would be required to dismiss the appeal. And, because Appellant has directed certain questions to the ALJ, the Board will transmit the appeal record to the ALJ to address Appellant’s inquiries, as appropriate.

¹ Decedent was a Yakama Indian. The probate number assigned to Decedent’s case in the Department of the Interior’s probate tracking system, ProTrac, is No. P000000707IP.

² The property interests are identified as a 1/4800 ownership interest in Allotment Nos. 145-492, 145-493, and 145-600. Modification Order at 2.

³ BIA apparently sought reopening to distribute Decedent’s interests in the Warm Springs allotments to Decedent’s spouse as heir, subject to a tribal purchase option. The ALJ decreed that, because Decedent’s spouse was not an enrolled member of the Warm Springs Tribe (Tribe), pursuant to the Act of August 10, 1972, Pub. L. No. 92-377, 86 Stat. 530, and 43 C.F.R. §§ 30.260 to 30.274, the Tribe would have the option to purchase the Warm Springs property interests—which would otherwise pass to Decedent’s spouse under Oregon law of intestate succession. It appears that Decedent’s spouse, i.e., Appellant’s father, has died. *See* Notice of Appeal at 1.

On receipt of the appeal, the Board ordered Appellant to complete service of his notice of appeal on the interested parties, as required by 43 C.F.R. §§ 4.310(b) and 4.323, and to notify the Board that he had done so. In addition, because it appeared that “an appeal to the Board from the Modification Order is untimely (or that an appeal from matters subsumed by a challenge to the Tribe’s exercise of the purchase option is premature),” and it was unclear why Appellant appealed to the Board, the Board ordered Appellant “to clarify . . . the specific grounds on which he seeks to challenge the Modification Order and/or to clarify if he is challenging the Tribe’s exercise of its purchase option.” Pre-Docketing Notice, Order for Clarification from Appellant, and Order for Appellant to Serve Interested Parties (Order), May 14, 2014, at 2-3.⁴

The Board set a deadline of June 27, 2014, for Appellant to comply with the Board’s order, and advised Appellant that if he failed to comply with or respond to the Board’s order, his appeal might be dismissed without further notice.

Appellant did not respond to the Board but instead submitted a letter to the ALJ, which the ALJ forwarded to the Board. In his letter, Appellant clarifies that “at no time” did he say there was an error in the ALJ’s order. Appellant explains that he had, and still has, questions as to why Decedent’s property could pass to the Warm Springs Tribe (i.e., if it exercises the purchase option). As noted, Appellant did not respond to the Board, and his letter to the ALJ does not address the issue of whether his appeal is timely.

We conclude, based on Appellant’s letter to the ALJ, and his failure to respond directly to the Board, that he has abandoned this appeal to the Board—to the extent it was ever intended to be an appeal. Appellant’s letter to the ALJ does not contend that the Modification Order was erroneous, but does ask why Appellant and his siblings could not obtain an interest in Decedent’s land.⁵

⁴ The Modification Order advised parties of their right to seek a hearing before the ALJ, pursuant to 43 C.F.R. § 30.268, if they seek to challenge the Tribe’s exercise of its purchase option, or to file an appeal with the Board, pursuant to 43 C.F.R. § 30.126(e), from any “remaining issues.” Modification Order at 2.

⁵ The Board notes that the issue before the ALJ was not whether Appellant and his siblings could hold an interest in Warm Springs property, e.g., if it was inherited from their father, but only whether the Warm Springs Tribe intended to exercise its Federal statutory right to purchase the interest from Decedent’s estate, in which case the proceeds go to the heir (Decedent’s spouse’s estate). When a tribe exercises a statutory purchase option at probate, the Department must “sell” the interests from the estate to the tribe. It is not a transaction that is subject to the consent, or denial of consent, of the heirs.

Even assuming that Appellant intended to challenge the Modification Order by appealing to the Board, we would be required to dismiss the appeal as untimely. An appeal to the Board from a probate judge's decision must be filed with the Board within 30 days from the date the decision was mailed with accurate appeal instructions. 43 C.F.R. § 4.321. The effective date of filing a notice of appeal with the Board is the date of mailing (if sent by U.S. mail) or the date of personal delivery (if not mailed). *Id.* § 4.310(a)(1); *see Confederated Tribes and Bands of the Yakama Nation v. Northwest Regional Director*, 56 IBIA 176, 181-82 (2013). The Board does not have authority to grant an extension for filing a notice of appeal, 43 C.F.R. § 4.310(d)(1), and untimely appeals must be dismissed, *id.* § 4.321(a). In the present case, the ALJ's Modification Order included instructions for appealing any "remaining issues" to the Board, and included a certification that it was mailed to the listed interested parties on February 28, 2014. Calculated from that mailing date, the deadline for filing an appeal with the Board would have been March 30, 2014. However, March 30 was a Sunday, therefore, the deadline for filing an appeal with the Board would have expired on the next business day, which was March 31, 2014. *See id.* § 4.310(c). Appellant mailed his notice of appeal to the Board on May 1, 2014, as shown by the postmark on the envelope. Because Appellant's notice of appeal was filed with the Board after the 30-day deadline expired, it was untimely and the Board would lack jurisdiction.

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 the appeal.⁶

I concur:

// original signed
Thomas A. Blaser
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge

⁶ Because Appellant's letter to the ALJ raised several additional questions, including a question regarding the probate of Appellant's father's estate, the Board will transmit the appeal record, which includes Appellant's letter, to the ALJ for action or response, as appropriate.