



INTERIOR BOARD OF INDIAN APPEALS

Estate of Raymond P. Sauser

59 IBIA 116 (08/29/2014)

Dismissing petition for reconsideration of:
59 IBIA 29

Judicial review of this case:

Affirmed, Estate of Sauser v. United States, No. CIV 14-5051, 2016 U.S. Dist. LEXIS 36844
(D.S.D. March 22, 2016)

Petitions for reconsideration of a Board decision “must be filed with the Board within 30 days from the date of the decision” 43 C.F.R. § 4.315(a); *Estate of Rudolph Lawrence Victor St. John*, 57 IBIA 182, 182 (2013). As noted, the Board’s decision was issued on July 17, 2014. Thus, the deadline for filing a petition for reconsideration expired on August 18, 2014.¹ Appellant filed his petition with the Board on August 20, 2014, as shown by the date of the postmark. See 43 C.F.R. § 4.310(a) (date of mailing is date of filing). Because Appellant’s petition for reconsideration was not timely filed, the Board must dismiss it for lack of jurisdiction. See *Estate of Patricia Louise Umtuch*, 50 IBIA 251, 252 (2009).

For the same reason, the Board must also dismiss Appellant’s request to stay the decision. Citing *Benally v. Acting Navajo Regional Director*, 57 IBIA 214, 217 (2013), Appellant contends that the Board has opined that it may have authority to stay a decision pending judicial review. In *Benally*, the Board assumed, without deciding, that it had jurisdiction to grant a stay that extends beyond reconsideration. *Id.* at 214, 217. But unlike Appellant in this case, the appellant in *Benally* submitted a timely petition for reconsideration and thus the Board had jurisdiction at least to consider the petition. In this case Appellant’s petition for reconsideration is untimely, the Board lacks any jurisdiction, and it must therefore dismiss Appellant’s request for stay.

The Board notes, however, that Appellant’s petition for reconsideration alleges that the Board “committed an error of law by citing 43 C.F.R. § 30.243 to support its . . . finding that the [Order Denying Rehearing] is final for purposes of rendering the Renunciation and Disclaimer [un]timely.” Petition for Reconsideration at 3-4. Appellant is correct that the Board erroneously cited 43 C.F.R. § “30.243” on page 32 of the decision, but as clearly evidenced by the parenthetical explanation that followed, that was a typographical error. The correct citation is to 43 C.F.R. § 30.240(d), which contains the language summarized in the parenthetical, in which we explained that a probate judge’s “final order on rehearing” must include a notice stating that interested parties who are adversely affected have the right to appeal that “final order” to the Board. 59 IBIA at 32. We thus issue this Notice of Errata and correct the citation on page 32 accordingly.

¹ The 30th day after the Board’s decision fell on Saturday, August 16. When the last day for filing a pleading with the Board falls on a Saturday, Sunday, Federal holiday, or other non-business day, the time period automatically is extended to the next business day, which in this case was Monday, August 18, 2014. See 43 C.F.R. § 4.310(c)(2).

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 dismisses Appellant's petition for reconsideration and request for stay.

I concur:

// original signed
Scott K. Fukumoto
Acting Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge