INTERIOR BOARD OF INDIAN APPEALS

Estate of Barney Perkins

60 IBIA 81 (03/09/2015)

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 BARNEY PERKINS	)	Order Docketing and Dismissing
	)	Appeal
	)	
	)	Docket No. IBIA 15-028
	)	
	)	March 9, 2015

Charlotte Baptiste (Appellant) appealed to the Board of Indian Appeals (Board) from an Order Denying Petition for Reopening (Order Denying Reopening) entered on October 10, 2014, by Indian Probate Judge (IPJ) Thomas K. Pfister in the estate of Barney Perkins (Decedent).[1]

On receipt of the appeal, the Board ordered Appellant to show cause (i.e., explain) why her appeal should not be dismissed as untimely and for lack of jurisdiction.[2] The Board advised Appellant that, in addition to appearing that the appeal was not timely filed with the Board, the Board lacks jurisdiction to consider appeals from decisions or delays in responding to request for information under the Freedom of Information Act, and that the Board, like the IPJ, lacks jurisdiction to consider inventory disputes.[3] The Board set a deadline of January 5, 2015, for Appellant to comply with the Board's order, and advised Appellant that if she failed to comply with or respond to the Board's order, her appeal might be dismissed without further notice.

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[1] Decedent was a Red Lake Band of Chippewa, Minnesota, Indian. His probate case is assigned Probate No. IP TC 151R71 C-30-73.

The Order Denying Reopening denied a petition for reopening filed by Jolayne Mitchell on the basis that the Office of Hearings and Appeals lacks jurisdiction to consider an inventory dispute. In her notice of appeal, Appellant complained that she had not received documents that she had requested "from the government and its agents," and that she was concerned that some estate assets may be dissipated before the conclusion of the inventory dispute pending before BIA. Notice of Appeal at 1.

[2] Pre-Docketing Notice and Order for Appellant to Show Cause, Nov. 20, 2014, at 2-3.

[3] The Board also noted that, if Appellant believes that a decision by BIA on the inventory dispute has been unreasonably delayed, she may submit a demand to BIA, in accordance with the requirements of 25 C.F.R. § 2.8, for a decision.

An appeal 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 mailing 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) ("When an appellant sends an appeal or other filing to the Board by commercial courier, the date-of-mailing rule does not apply, and the date of filing is the date of delivery, i.e., receipt by the Board."). 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). An appellant has the burden to demonstrate that her appeal was timely filed with the Board. *Saguaro Chevrolet, Inc. v. Western Regional Director*, 43 IBIA 85, 85 (2006).

The IPJ's Order Denying Reopening included accurate appeal instructions and included a certification that it was mailed to the listed interested parties (including Appellant) on October 10, 2014. Calculated from that mailing date, the deadline for filing an appeal with the Board expired on November 10, 2014.[4] Appellant sent her appeal to the Board by commercial courier, FedEx, and the Board received it on November 12, 2014. Therefore, Appellant's appeal was filed with the Board on November 12, the date of delivery of the appeal by FedEx to the Board. 43 C.F.R. § 4.310(a)(1).

The U.S. Postal Service's Track-and-Confirm service on its website indicates that Appellant received the Board's order on December 9, 2014. The Board has received no response from Appellant.

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 dockets but dismisses this appeal as untimely and for failure to prosecute.

I concur:

// original signed	//original signed
Thomas A. Blaser	Steven K. Linscheid
Administrative Judge	Chief Administrative Judge

[4] Because the 30th day after mailing was Sunday, November 9, 2014, the filing date was automatically extended to Monday, November 10, 2014. 43 C.F.R. § 4.310(c)(2).