



INTERIOR BOARD OF INDIAN APPEALS

Geraldine Renfro v. Pacific Regional Director, Bureau of Indian Affairs

63 IBIA 281 (07/28/2016)



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

GERALDINE RENFRO,)	Order Docketing and Dismissing
Appellant,)	Appeal
)	
v.)	
)	Docket No. IBIA 16-075
PACIFIC REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	July 28, 2016

Geraldine Renfro (Appellant) appealed to the Board of Indian Appeals (Board) from the alleged inaction of the Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA), from a request to complete a Presumption of Death package and submit it to the Probate Hearings Division for Appellant’s sister, Teresa Kay Davis, who has been missing for over 40 years.¹ Appellant seeks to have her sister presumed dead so that her interest in a trust allotment can be distributed, which, Appellant believes, may in turn facilitate her obtaining consent from other co-owners to live on the allotment. Appellant first provided information to initiate an investigation of presumption of death in April 2014, in accordance with 25 C.F.R. § 15.106, and BIA assigned a probate case number at that time.² Concerned by delay in submitting a completed case file to the Office of Hearings and Appeals (OHA), Appellant submitted a request for action to the Regional Director under 25 C.F.R. § 2.8 (Appeal from inaction of official), and the Regional Director failed to take action or issue a decision.³

¹ Appellant and her sister are enrolled North Fork Rancheria Indians. Appellant claims that her sister disappeared in 1973 and was listed on the National Missing Person’s Register in 2005. Notice of Appeal, May 13, 2016, at 1 (NOA). The NOA included a copy of an appeal filed with the Regional Director on December 2, 2015.

² The Presumption of Death case for Teresa Kay Davis was assigned Probate No. P000122649IP in the Department of the Interior’s Probate Tracking System, ProTrac.

³ Section 2.8 provides, in relevant part, that when a request for action is made pursuant to § 2.8(a), the BIA official receiving the request “must either make a decision on the merits of the initial request within 10 days from receipt of the request for a decision or establish a reasonable later date by which the decision shall be made, not to exceed 60 days

(continued...)

On June 28, 2016, at the request of the Board, the Regional Director filed a status report,⁴ which stated that BIA had transmitted documents to Chief Administrative Law Judge Earl J. Waits in order that OHA could make a determination in the presumptive death probate of Teresa Kay Davis. Memorandum from Regional Director, June 28, 2016 (Status Report). According to the Regional Director, this “probate package” was sent on June 1, 2016, and “OHA has already scheduled a hearing” in the matter. *Id.* On July 12, 2016, Appellant confirmed that she had received the June 28, 2016, status report, but had not received notice of a hearing as of that date. Appellant also stated that she had requested a copy of the probate package on July 11, 2016, and that she wished to “continue this appeal for 90 days” should OHA determine that the probate package submitted by BIA was inadequate for the purpose of proceeding with the presumption of death hearing. Appellant also requested that she be informed of the contents of the probate package.

Section 2.8 is a mechanism to prompt action by BIA. The Board’s role in a § 2.8 appeal is limited to deciding whether BIA must take action or issue a decision, and does not extend to determining how BIA must act in the first instance, or, as relevant here, whether the action taken will obtain the result sought by Appellant. *See Roanhorse v. Navajo Regional Director*, 53 IBIA 126, 126-27 (2011). Because BIA has completed its investigation and submitted the file for the presumption of death determination for Teresa Kay Davis to OHA, as provided under 25 C.F.R. § 15.106, no further action by BIA is required at this time. We therefore dismiss this § 2.8 appeal as moot. *See Mullins v. Northwest Regional Director*, 52 IBIA 231, 231 (2010) (dismissing as moot an appeal from inaction after the regional director issued a response). For that same reason, we decline Appellant’s request to continue this appeal for 90 days while OHA reviews the matter. The presumption of death determination is now before OHA and subject to its regulations. *See* 43 C.F.R. Part 30. Regarding Appellant’s request to be informed of the contents of the probate package, the regulations governing the probate proceedings provide that a party with an interest in a

(...continued)

from the date of request.” 25 C.F.R. § 2.8(b). In this case, the action sought by Appellant was the completion of the presumption of death file and its transfer to OHA, as required by 43 C.F.R. § 30.110. *See* 25 C.F.R. § 15.106(c) (BIA may initiate a probate case after completing investigation of the presumed death of an owner of an interest in trust or restricted land or trust personalty).

⁴ Due apparently to non-delivery of the original filing, the Board did not receive a hard copy of the status report until July 18, 2016. A copy of a June 20, 2016, memorandum indicating that BIA had submitted the results of its investigation into Davis’s presumed death to OHA on June 1, 2016, along with the certificate of service, was also received by the Board along with the copy of the June 28, 2016, status report.

decendent's estate may examine the probate record after OHA receives the case. 43 C.F.R. § 30.115.

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
Robert E. Hall
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge