



INTERIOR BOARD OF INDIAN APPEALS

Estate of Bonnie Sue Parker

47 IBIA 178 (08/14/2008)

Virginia. The Notice of Decision did not provide any information concerning the filing of a petition for rehearing.

On July 2, 2008, Appellant wrote to the ALJ “to appeal” the Order Determining Heirs. Letter from Appellant to ALJ, July 2, 2008. She stated that she was appealing “on the basis that we were not informed that we could purchase the [Decedent’s interests in trust] land.” *Id.* Appellant asked for an extension of time to find an attorney to represent her.

In response to Appellant’s July 2 letter, the ALJ issued the Notice of Receipt on July 17, 2008. Although the ALJ recognized that Appellant stated grounds for challenging the Order Determining Heirs, he did not treat the letter as a petition for rehearing. Instead, he identified what he considered to be deficiencies in the letter that precluded it from being a proper petition for rehearing, and concluded that, “[i]n the absence of compliance with 43 CFR 4.241, [Appellant’s] letter cannot be considered.” Notice of Receipt at 1. The ALJ informed Appellant that she still had time to file a petition for rehearing, and noted that the parties “were advised in both the Decision and the attached Notice of Decision [that] Petitions for Rehearing . . . must be submitted within sixty days of the Decision’s issuance.” *Id.* Attached to the Notice of Receipt was a copy of 43 C.F.R. § 4.241.

Meanwhile, on July 17, 2008, the Board received a letter from Appellant, which the Board construed as a request for assistance and response to Appellant’s July 2 letter to the ALJ. The Board responded to Appellant on July 18, 2008, advising her that the Board had contacted the ALJ’s office and was informed that a response had been sent to Appellant by the ALJ on July 17, 2008. The Board also explained that, pursuant to 43 C.F.R. §§ 4.241 and 4.320(a), a person appealing a probate decision must first seek rehearing with the ALJ and must do so within sixty days from the date of the decision. The Board took no further action on the matter.

Thereafter, the Board received Appellant’s August 2 letter, which is the subject of this appeal. Appellant states that she sought “an extension for time to seek legal help, which . . . was denied. I was advised to just write to [the] Board of Appeals before the appeal date ended.” Letter from Appellant to Board, Aug. 2, 2008, at 1.

Discussion

As was explained in the Board’s letter of July 18 to Appellant, the Board lacks jurisdiction to review the merits of probate appeals in the absence of an order on a petition for rehearing, a petition to reopen, or a tribal purchase option. 43 C.F.R. § 4.320(a); *Estate of Joseph Goggles*, 46 IBIA 158 (2008). Relevant to this case, no formal order on

rehearing has been issued, nor does the Notice of Receipt purport to be such an order. For this reason, we lack jurisdiction over Appellant’s appeal to this Board and we dismiss.

However, because Appellant received conflicting instructions from the ALJ on how to seek review of the Order Determining Heirs,¹ and because her filing with the Board is consistent with the instructions provided in the Notice of Decision that accompanied the Order Determining Heirs, we refer her appeal to the ALJ as a timely petition for rehearing to be considered with her earlier letter to the ALJ. Following the ALJ’s order on the petition for rehearing, Appellant may — at her option — seek further review from this Board.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed but dismissed as premature. This matter is referred to the ALJ for his consideration and decision.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge

¹ Although Appellant subsequently was advised by the Notice of Receipt as well as by the Board’s July 18 letter that she must first seek review of the Order Determining Heirs through a petition for rehearing, the Notice of Receipt still referred to the Notice of Decision which, as we have noted, erroneously directed the parties to appeal to the Board. Therefore, Appellant understandably may have been uncertain about which appeal instructions she was to follow.