



INTERIOR BOARD OF INDIAN APPEALS

Estate of Carl Albert Bement

51 IBIA 146 (02/22/2010)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
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ESTATE OF CARL ALBERT BEMENT) Order Docketing and Dismissing Appeal
)
) Docket No. IBIA 10-045
)
) February 22, 2010

The Board of Indian Appeals (Board) received a notice of appeal from Bobbi Ann Old Crow (Appellant), who seeks review of an Order Denying Rehearing entered on November 16, 2009, by Indian Probate Judge (IPJ) Albert C. Jones in the estate of Carl Albert Bement (Decedent), deceased Northern Cheyenne Indian, Probate No. P000069184IP.¹ We docket this appeal but dismiss it as untimely because the IPJ provided accurate instructions for filing an appeal with the Board, and this appeal was not filed with the Board within the 30-day deadline following the IPJ's Order Denying Rehearing.²

Under the Department of the Interior's probate regulations, 43 C.F.R. § 4.321(a) (2009), an appeal from a probate judge's decision must be filed with the Board within 30 days after the date on which the decision was mailed with accurate appeal instructions. Any appeal that is not filed by the 30-day deadline will be dismissed. *Id.*; *Estate of Daniel Temartz Sampson*, 49 IBIA 207, 208 (2009). The date of filing an appeal with the Board is the date the appeal is postmarked (if sent by regular, first class mail) or the date of delivery (if sent by personal delivery). 43 C.F.R. § 4.310(a); *Estate of Mabel Ellen Roberts*, 50 IBIA 134, 135 (2009).

In the present case, the IPJ's Order Denying Rehearing was accompanied by a notice that contained accurate appeal instructions, including the deadline for filing an appeal and the Board's correct address. The notice included a certification that the order and notice were mailed on November 16, 2009. A copy of the Order Denying Rehearing and the

¹ Appellant refers to Decedent as Albert Raymond "Carl" Bement.

² Appellant's appeal does not indicate that it was served on interested parties, as required by 43 C.F.R. § 4.323 (2009). Because we summarily dismiss this appeal as untimely, we have not required Appellant to complete this service requirement.

accompanying notice was sent to Appellant at the same address that she used for filing her notice of appeal with the Board. Therefore, the time for filing an appeal with the Board expired on December 16, 2009. Appellant sent her notice of appeal by regular, first class mail to the Board, and her appeal is postmarked January 19, 2010, more than a month after the time for appeal passed. Thus, the appeal is untimely.

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 this appeal but dismisses it as untimely.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge