



INTERIOR BOARD OF INDIAN APPEALS

Estate of Gloria Little Light Castro

47 IBIA 14 (04/15/2008)



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 GLORIA LITTLE LIGHT) Order Docketing and Dismissing Appeal
CASTRO)
) Docket No. IBIA 08-43
)
) April 15, 2008

On February 29, 2008, the Board of Indian Appeals (Board) received a notice of appeal from Felix M. Castro II (Appellant), *pro se*. Appellant's notice of appeal was forwarded to the Board by Indian Probate Judge (IPJ) Albert C. Jones, to whom it was originally mailed. Appellant seeks review of an Order Granting Reopening and Modifying Decision (Order Granting Reopening) entered on December 18, 2007, by the IPJ in the estate of Gloria Little Light Castro (Decedent), deceased Crow Indian, Probate No. P-0000-35765.¹ Because an appeal from a final order on reopening must be filed within 60 days from the date the order is issued, and because Appellant's appeal was filed beyond that 60-day deadline, the Board docketed this appeal, but dismisses it for lack of jurisdiction because it is untimely. We have considered Appellant's argument that his failure to file the appeal within the 60-day period should be excused, but we are not convinced that we may do so.

Under the applicable regulations, appeals from orders on reopening must be filed "[w]ithin 60 days from the date of the decision." 43 C.F.R. § 4.320(b). The 60-day deadline for filing an appeal is jurisdictional. *Id.* § 4.320(b)(3); *Estate of Edward Benedict Defender*, 44 IBIA 8 (2006). Untimely appeals will be dismissed. *See* 43 C.F.R. § 4.320(b)(3); *Estate of Mary Jo (Mosho) Estep*, 44 IBIA 18 (2006).

¹ The order reopened a Decision entered by the IPJ on July 25, 2007, in which the IPJ determined that Decedent had died intestate and her sole heir was Appellant, Decedent's widower. The Crow Agency Superintendent, Bureau of Indian Affairs (BIA) sought rehearing of the Decision after BIA located a will executed by Decedent, in which she devised her trust estate to her daughter, Priscilla R. Nomee. By order dated October 30, 2007, the IPJ denied rehearing on procedural grounds, but then reopened the estate sua sponte to address the will. In the Order Granting Reopening, the IPJ approved the will and modified the Decision for the estate to pass to Nomee.

The Order Granting Reopening was issued on December 18, 2007, and therefore the deadline for filing appeals with the Board was Tuesday, February 19, 2008, because the 60th day fell on a Saturday and the following Monday was a Federal holiday. *See* 43 C.F.R. § 4.310(c) (where the last day for filing falls on a Saturday, Sunday, or Federal holiday, deadline for filing is next business day); *Estate of Alvin Sherwood LeSage*, 46 IBIA 324, 325 (2008). The Order Granting Reopening included correct instructions that any appeal must be filed with the Board within 60 days, and provided the Board's address. Appellant mailed his notice of appeal to the IPJ (but not to the Board) on February 21, 2008, and the IPJ then forwarded it to the Board for filing. The Board received the notice of appeal on February 29, 2008, which was more than 60 days after the date of the Order Granting Reopening.

In his notice of appeal, however, Appellant asserted that he had not received the Order Granting Reopening until February 20, 2008 — one day after the 60-day deadline. Documents obtained from the IPJ and BIA indicated that the Order Granting Reopening initially was mistakenly mailed to Appellant at an incorrect address, but that in early February both the IPJ and BIA mailed copies of the order to Appellant at a new address that he had provided, in Missoula, Montana.² By the time the correspondence arrived at the Missoula, Montana address, however, Appellant had moved to a new address, in Glendive, Montana, without giving notice of the change of address.

The Board then issued an order for Appellant to show cause why this appeal should not be dismissed as untimely. In its order, the Board noted that, even assuming that the appeal period could be tolled in certain circumstances, in the present case the failure of Appellant to receive the Order Granting Reopening until February 20, 2008, ultimately did not appear to be the fault of BIA, or the IPJ. Both, it appeared, had mailed copies of the order to Appellant at the most recent address he provided and in time for him to have received it and to have filed a timely appeal.

In response to the Board's show cause order, Appellant argues that the Board should treat his appeal as timely filed because it was not his fault that he moved addresses several

² After BIA received a letter from Appellant, dated January 30, 2008, BIA mailed a copy of the Order Granting Reopening to Appellant on February 5, 2008, and the IPJ mailed a copy of the order to Appellant on February 8, 2008.

times.³ We are not convinced that this argument provides us with any basis or authority to consider the appeal to be timely. Although Appellant argues that his address changed due to circumstances beyond his control, thus delaying his receipt of the Order Granting Reopening, Appellant does not argue that his failure to receive the Order Granting Reopening until February 20, 2008, was the fault of BIA or the IPJ.

Whether or not there might be circumstances under which the Board could deem the 60-day period for filing a probate appeal to be tolled (an issue we do not decide here), we conclude that the Board has no authority under the circumstances of this case to ignore the regulatory deadline. *Cf. Estate of Lucille Kingbird Owens*, 46 IBIA 306, 308 (2008) (Board lacks authority to waive or ignore a duly promulgated Departmental regulation). We thus conclude that Appellant's 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 for lack of jurisdiction because it is untimely.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

³ In its order to show cause, the Board also noted that notwithstanding the appeal instructions provided with the Order Granting Reopening, Appellant had mailed his notice of appeal to the IPJ instead of filing it with the Board. In response, Appellant argues that no one explained the appeal instructions to him. Although we disagree that the appeal instructions provided were not clear, the fact that Appellant mailed his appeal to the IPJ does not affect our disposition because even if Appellant had mailed it to the Board on February 21, it would still have been untimely.