



INTERIOR BOARD OF INDIAN APPEALS

Estate of George Hanson

25 IBIA 47 (11/29/1993)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF GEORGE HANSON : Order Affirming Decision
:
: Docket No. IBIA 94-18
:
: November 29, 1993

Appellant John Hanson, through counsel James J. Davis Jr., Esq., Bethel, Alaska, has appealed from an Order Denying Petition for Rehearing issued on September 16, 1993, by Administrative Law Judge William E. Hammett. Judge Hammett denied appellant's petition as untimely filed.

In his notice of appeal to the Board, appellant incorporates by reference the argument he made before Judge Hammett concerning the timeliness of his petition for rehearing. He contends:

The applicable notice [of Judge Hammett's original decision] was mailed on May 14, 1993, and stated that a petition for rehearing must be filed within 60 days. To compute when the designated period ends, it is necessary to turn to the computation of time regulation most relevant to the rehearing regulation which appears at 43 C.F.R. S 4.310(c) Computation of time for filing and service. This regulation states:

Except as otherwise provided by law, in computing any period of time . . . the day upon which the decision . . . to be appealed . . . was served . . . is not to be included . . . (emphasis added)

This provision has a twofold effect: (1) it accommodates Federal Rule of Civil Procedure 6(e) that provides for a 3 day extension when service of notice is mailed, as it was in this case; and (2) the 63 day designated period for filing a notice of rehearing began on May 15th. Thus this petition filed on July 16, the 63rd day, is timely filed.

(Appellant's Petition for Rehearing at 1 n.1).

Judge Hammett concluded that appellant's time for filing a petition for rehearing expired on July 13, 1993, three days prior to the date on which appellant filed his petition.

The regulation quoted by appellant, 43 CFR 4.310(c), is actually the Board's rule concerning computation of time. That rule is not applicable to probate proceedings before Administrative Law Judges. However, the

applicable rule, found at 43 CFR 4.22(e), is virtually identical to the Board's rule. 1/

Appellant correctly states that his period for filing a petition for rehearing began to run on May 15, 1993. He is incorrect, however, in his assertion that he was entitled to a 63-day filing period, rather than the 60-day period provided in 43 CFR 4.241. 2/

43 CFR 4.22(e) is a general rule applicable to administrative proceedings in the Department of the Interior. It is in essence a "default" rule, which applies where no other provision applies to a particular category of proceeding. 3/ Thus, the phrase "except as otherwise provided by law" refers to situations where specific rules exist with respect to a particular category of proceeding. It is clear that the term "law" in this phrase means "relevant law" and does not authorize the importation of extraneous law into the Department's procedural regulations.

Appellant cites Rule 6(e) of the Federal Rules of Civil Procedure. The scope of the Federal Rules, however, is made clear in Rule 1: "These rules govern the procedure in the United States district courts in all suits of a civil nature * * *." The Federal Rules of Civil Procedure do not apply to administrative probate proceedings in the Department of the Interior.

Appellant's petition for rehearing was required to be filed within 60 days of the date of mailing of Judge Hammett's May 14, 1993, decision. The 60-day period was required to be computed in accordance with 43 CFR 4.22(e). Appellant's petition was untimely under these provisions.

1/ 43 CFR 4.22(e) provides:

"Except as otherwise provided by law, in computing any period of time prescribed for filing and serving a document, the date upon which the decision or document to be appealed from or answered was served or the day of any other event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day."

2/ 43 CFR 4.241 provides:

"Any person aggrieved by the decision of the administrative law judge may, within 60 days after the date on which notice of the decision is mailed to the interested parties, file with the Superintendent a written petition for rehearing."

3/ The Board's rule in 43 CFR 4.310(c) is also a default rule, which takes into consideration the fact that the Board decides cases under various program regulations of the Bureau of Indian Affairs, as well as under its own general procedural¹ regulations.

Appellant's notice of appeal and accompanying documents show on their face that there is no way appellant can prevail in this appeal. Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is docketed, and Judge Hammett's May 14, 1993, order is affirmed.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge