



INTERIOR BOARD OF INDIAN APPEALS

Estate of Maude Tischecoddy Atewoofakewa

28 IBIA 68 (06/19/1995)



United States Department of the Interior

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

ESTATE OF MAUDE TISCHECODDY : Order Docketing Appeal and
ATEWOOFTAKEWA : Affirming Decision
:
: Docket No. IBIA 95-123
:
: June 19, 1995

Appellant Marie Parton seeks review of a May 22, 1995, order denying reopening issued by Administrative Law Judge Richard L. Reeh in the estate of Maude Tischecoddy Atewooftakewa (decedent), IP OK 104 P 92-1. Appellant's notice of appeal states in its entirety:

The attached letters explain what appears to me to be an extreme case of violation of due process of law. If there are any questions or if I may explain my position in detail, I would appreciate hearing from you. I will appreciate any help which you might be able to extend in this matter.

The documents appellant attached to her notice of appeal include (1) a copy of Judge Reeh's May 22, 1995, order denying reopening; (2) a copy of an envelope sent to appellant from Judge Reeh's office, which does not show the postmark, or otherwise indicate its original contents; (3) a copy of a 3-page, undated, unaddressed, handwritten document with an original notation "Statement;" (4) a copy of an October 12, 1993, letter addressed to Judge Reeh, with the original notation "1st Request to Reopen;" (5) what appears to be an original letter dated January 30, 1995, addressed to the Superintendent, Anadarko Agency, Bureau of Indian Affairs, with the original notation "2nd Request to Reopen;" and (6) a copy of decedent's July 24, 1985, will.

In addition to these materials, the Board requested several documents from Judge Reeh's office. These materials include (1) copies of the notices setting hearings on August 31, 1993, and October 19, 1993, showing distribution on appellant at the address she gave the Board as her return address; (2) copies of the lists of persons appearing at the hearings, showing that appellant attended both hearings; and (3) a copy of the October 29, 1993, order, with attached rehearing information, showing service on appellant at her correct address.

43 CFR 4.241(a) provides a 60-day period after the date a probate decision is mailed in which a petition for rehearing may be filed. Here, appellant had until December 29, 1993, in which to petition for rehearing. Judge

Reeh's May 22, 1995, order states that appellant did not file a timely petition for rehearing. Appellant has not disputed this statement. Under these circumstances, appellant's January 30, 1995, letter to the Anadarko Agency Superintendent can only be treated as a petition for reopening. 1/

43 CFR 4.242(a) allows a petition for reopening to be filed within 3 years of the date of the final decision by "any person * * * who had no actual notice of the original proceedings and who was not on the reservation or otherwise in the vicinity at any time while the public notices of the hearing were posted." The materials before the Board support Judge Reeh's finding that appellant received actual notice of the hearings and participated in them. Appellant has submitted nothing disputing this conclusion.

The Board sees no circumstances under which appellant would have standing to seek reopening of decedent's estate, and no reason for delaying final resolution of this matter.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from Judge Reeh's May 22, 1995, order denying reopening is docketed, and that order is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge

1/ Appellant has characterized an Oct. 12, 1993, letter to Judge Reeh as her "1st Request for Reopening." Because no decision had been issued as of Oct. 12, 1993, and in fact a supplemental hearing was held on Oct. 19, 1993, this letter cannot be considered a petition either for rehearing or for reopening.