



INTERIOR BOARD OF INDIAN APPEALS

Estate of Gerald Wayne Smith

38 IBIA 235 (12/03/2002)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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SUITE 300
ARLINGTON, VA 22203

ESTATE OF GERALD WAYNE SMITH : Order Docketing Appeal and
: Affirming Decision
:
: Docket No. IBIA 03-11
:
: December 3, 2002

This is an appeal from an October 4, 2002, order issued by Indian Probate Judge George D. Tah-bone, in which the Judge dismissed a petition for rehearing filed by Edwin G. Smith (Appellant) in the estate of Gerald Wayne Smith (Decedent). IP 001-301-202E. For the reasons discussed below, the Board docketed this appeal and affirms Judge Tah-bone's October 4, 2002, order.

Judge Tah-bone issued his initial order in Decedent's estate on April 18, 2002. In that order, he found that Decedent's heir, as determined under the laws of intestate succession of the State of North Dakota, was his surviving spouse, Frances Jane Smith. Appellant wrote to the Judge on April 24, 2002, stating that he wished to petition for rehearing and asking for an extension of time in which to do so. On May 8, 2002, Judge Tah-bone issued an order to show cause. He informed Appellant that Appellant's April 24, 2002, letter did not meet the requirements for a petition for rehearing and denied Appellant's request for an extension of time, stating that sufficient time remained for filing a petition for rehearing. He further informed Appellant that a proper petition for rehearing must be filed by June 17, 2002, and that failure to file a proper petition or respond to the May 8, 2002, order by June 17, 2002, would be grounds for denying rehearing.

Appellant did not respond. On October 4, 2002, Judge Tah-bone dismissed Appellant's petition for rehearing.

In his notice of appeal to the Board, Appellant did not allege any error in the October 4, 2002, dismissal order. Rather, he argued only that the Judge's April 18, 2002, determination of heirs would have been different if Appellant had been able to attend one of the probate hearings held in Decedent's estate. In light of Appellant's failure to allege error in the decision he was appealing, the Board ordered him to file a statement with the Board, giving his reasons for believing that Judge Tah-bone's October 4, 2002, order was in error.

