



INTERIOR BOARD OF INDIAN APPEALS

Estate of Anthony Munks

39 IBIA 96 (07/16/2003)

Related Board cases:

42 IBIA 100

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United States Department of the Interior

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INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF ANTHONY MUNKS : Order Reversing Order Denying Rehearing
: and Order for Rehearing
:
: Docket No. IBIA 02-113
:
: July 16, 2003

Appellants Kevin Day and the Day Family sought review of an order denying rehearing entered in the Estate of Anthony Munks by Administrative Law Judge William E. Hammett on May 9, 2002. IP SA 220 N 98. For the reasons set forth below, the Board of Indian Appeals (Board) reverses Judge Hammett's May 9, 2002, decision and directs the Judge to rehear this case.

Appellants are maternal collateral relatives of Decedent Anthony Munks. On June 9, 2000, Judge Hammett issued an Order Determining Heirs in this estate. On July 25, 2001, Judge Hammett issued an Order Granting Petition for Rehearing Instante and Order Modifying Order Determining Heirs. In his decision, he found that Appellants, as maternal relatives, were not entitled to inherit a share from a Swinomish Allotment inherited from the paternal side of Decedent's family.

Appellant Kevin Day filed a motion for rehearing, which Judge Hammett denied as untimely in his October 10, 2001, decision. Appellant Day appealed this order to the Board on December 13, 2001. On April 10, 2002, the Board reversed Judge Hammett's October 10, 2001, decision, finding that the appeal was timely and remanded the case to him "for a decision on the merits of Appellant's motion." Estate of Anthony Munks, 37 IBIA 202, 210 (2002).

On May 9, 2002, Judge Hammett issued an Order Denying Motion for Rehearing. Instead of issuing a decision on the merits as ordered by the Board on April 10, 2002, he found that Appellants had not met the requirements of 43 C.F.R. § 4.241(a), and denied rehearing.

The Board has reviewed the record. It finds that, under the circumstances of this case, Appellants have satisfied the requirements of 43 C.F.R. §4.241(a). Therefore, the Board again directs Judge Hammett to decide the merits of the petition for rehearing.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Judge Hammett's May 9, 2002, order is reversed. The Board directs Judge Hammett to rehear the case.

//original signed
Kathleen R. Supernaw
Acting Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge