



INTERIOR BOARD OF INDIAN APPEALS

Estate of Dawn Marie Smith Maki

44 IBIA 140 (02/26/2007)



## 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 DAWN MARIE SMITH MAKI : Order Docketing and Dismissing  
: Appeal  
:  
: Docket No. IBIA 07-47  
:  
: February 26, 2007

Appellant Trevor Blomquist appealed from a September 25, 2006 Order Affirming Former Decision after Rehearing (Order) entered by Indian Probate Judge Albert C. Jones (IPJ) in the estate of Dawn Marie Smith Maki (Decedent), deceased Blackfeet Indian, Probate No. P-0000-02680-IP. <sup>1/</sup> The Board of Indian Appeals (Board) docketed the appeal, but dismisses it for lack of jurisdiction because it is untimely.

Subsection 4.320(b) of 43 C.F.R. provides that an appeal from an order on a petition for rehearing must be filed “[w]ithin 60 days from the date of the decision.” The 60-day deadline for filing an appeal is jurisdictional. *Id.* § 4.320(b)(3). Untimely appeals must be dismissed. *Estate of Mary Jo (Mosho) Estep*, 44 IBIA 18 (2006).

Appellant’s notice of appeal was filed with the Board more than 60 days after the IPJ’s decision: it was filed on December 7, 2006, as shown by the postmark on the envelope in which the appeal was mailed. *See* 43 C.F.R. § 4.310(a). Recognizing the timeliness issue, Appellant argued in his notice of appeal that the IPJ’s decision was sent to him at an incorrect address. Appellant contended that he was not aware of the

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<sup>1/</sup> The Order let stand an April 27, 2006 decision by the IPJ, in which he determined that Decedent died intestate owning trust or restricted property on the Blackfeet Reservation in the State of Montana and that Decedent’s sole heir was her spouse, a non-Indian. Appellant is Decedent’s son.

September 25 decision until he made an inquiry to the Office of Hearings and Appeals on December 4, 2006, after which he filed this appeal. 2/

The Board obtained from the IPJ's office a copy of Appellant's petition for rehearing, received by the IPJ on June 27, 2006. That petition contains the same address that Appellant contends is his correct address, and is the same one shown on Appellant's appeal to the Board. The Notice accompanying the IPJ's decision indicates that the September 25 decision was mailed to Appellant at a different address, which he contends is his former address.

However, the IPJ's office also submitted to the Board a copy of an August 30, 2006 Attendance Roster (sign-in sheet) for the hearing held by the IPJ on Appellant's petition for rehearing. On the sign-in sheet, which post-dates Appellant's petition for rehearing, Appellant listed as his address the address to which the IPJ sent Appellant's copy of the decision (the address he now contends is his former address). 3/ Thus, it appears that the IPJ sent Appellant's copy of the September 25 decision to the most current address reported by Appellant as his own.

By order dated December 18, 2006, the Board ordered Appellant, on or before January 12, 2007, to show cause why this appeal should not be dismissed as untimely. The Board noted that, under the circumstances, it was not clear that the IPJ committed any error in mailing the Order to Appellant's address of record, which was also the address used by Appellant at the August 30, 2006 hearing.

The Board has received no response from Appellant. Because Appellant filed his appeal more than 60 days after the September 25, 2006 decision, and because Appellant has failed to respond to the Board's order to show cause, the Board finds that his appeal is untimely.

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2/ The IPJ's office has submitted to the Board a Report of Contact which shows that Appellant contacted that office on December 5, not December 4. It appears to be the same call described by Appellant in his notice of appeal.

3/ The Board notes that the address that Appellant contends is his former address is the same address as that listed for Stephanie Thompson, whom Appellant identifies as his sister and to whom a copy of the IPJ's decision was also sent. Both addresses that Appellant has variously identified as his are in Kalispell, Montana.

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.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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// original signed  
Debora G. Luther  
Administrative Judge