



INTERIOR BOARD OF INDIAN APPEALS

Estate of Laverne Fayette Montgomery

50 IBIA 156 (08/24/2009)



decision was mailed with accurate appeal instructions. Any appeal that is not filed by the 30-day deadline will be dismissed. *Id.*; *Estate of Daniel Temartz Sampson*, 49 IBIA 207, 208 (2009). In the present case, the ALJ's Order Reopening Case was accompanied by a notice that contained accurate appeal instructions, including the deadline for filing an appeal and the Board's address. The notice included a certification that the order and notice were mailed on July 13, 2009. Therefore, the time for filing an appeal expired on August 12, 2009.

Appellant did not send her appeal to the Board but sent it instead to OHA in Sacramento, California. The Sacramento office delivered Appellant's appeal to the Board, where it was received on August 17, 2009. Thus, the appeal was not filed with the Board within the 30-day deadline, *see* 43 C.F.R. § 4.310(a) (date of filing is the date of mailing or date of personal delivery to the Board), and "[w]e will dismiss any appeal not filed by this deadline," *see* 73 Fed. Reg. at 67,288, *to be codified at* 43 C.F.R. § 4.321(a). An appellant who fails to follow accurate appeal instructions bears the risk that the appeal will not be timely filed. *See Castillo v. Pacific Regional Director*, 43 IBIA 9, 10 (2006), and cases cited therein.

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 as untimely.<sup>3</sup>

I concur:

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// original signed  
Debora G. Luther  
Administrative Judge

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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<sup>3</sup> In addition, to the extent that Appellant claims that she is entitled to be her sister's sole heir, such a claim is outside the scope of the Order Reopening Case and therefore would not be properly before the Board even if her appeal were timely. *See Estate of David Martin Champagne*, 49 IBIA 209, 209-10 (2009). Decedent's heirs were determined in 2006 and the time for appealing that decision has long passed; the only issue considered by the ALJ in reopening the case is the addition of property to the inventory of Decedent's estate.

Similarly, to the extent that Appellant seeks to assert a claim against Decedent's estate for the costs of Decedent's funeral, the time for submitting claims ended at the conclusion of the hearing held in Decedent's estate on October 25, 2006, at which Appellant was present. *See* 43 C.F.R. § 4.250(a) (1999); *see also* Order Determining Heirs, at 1 (no claims were presented at the hearing).