



INTERIOR BOARD OF INDIAN APPEALS

Estate of Barbara A. (Eteyan) Green

51 IBIA 27 (12/16/2009)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF BARBARA A. (ETEYAN)) Order Docketing and Dismissing
GREEN) Appeal
)
) Docket No. IBIA 10-026
)
) December 16, 2009

On December 4, 2009, the Board of Indian Appeals (Board) received an appeal by Steve Brent Dahlsten and Frank Rodger Dahlsten (Appellants), challenging the validity of a provision in the American Indian Probate Reform Act (AIPRA), *see* 25 U.S.C. § 2206(j)(2)(B)(iii), which Administrative Law Judge (ALJ) Richard L. Reeh found precluded Appellants, who were adopted out, from inheriting from the Indian trust estate of their biological mother, Barbara A. (Eteyan) Green (Decedent), deceased Prairie Band Potawatomi, Probate No. P000072871IP. Appellants sent their appeal to the ALJ, who transmitted it to the Board. We docket but dismiss this appeal because the ALJ provided accurate appeal instructions for filing an appeal with the Board, and this appeal was not filed with the Board within the 30-day deadline following the ALJ's October 27, 2009, Order Dismissing Petition for Rehearing.¹

An appeal from a probate judge's decision must be filed with the Board within 30 days from the date the decision was mailed with accurate appeal instructions. 73 Fed.

¹ Decedent died on October 21, 2008. On August 31, 2009, the ALJ issued an Order Determining Heirs, Disapproving Will and Decreeing Distribution. The ALJ found that Appellants were adopted into another family, and, under 25 U.S.C. § 2206(j)(2)(B)[(iii)] (with exceptions not relevant here), Appellants were not heirs of Decedent's Indian trust property. Appellants petitioned for rehearing, arguing that under Kansas law, they remain heirs at law of their biological mother. In dismissing Appellants' petition, the ALJ found that subsection 2206(j)(2)(B)(iii) had become effective on June 20, 2006, more than 2 years before Decedent's death, and therefore Appellants were not heirs to Decedent's Indian trust property, even though they would have been heirs if Decedent had died before AIPRA became effective.

Reg. 67,256, 67,288 (Nov. 13, 2008), *to be codified at* 43 C.F.R. § 4.321(a). Untimely appeals must be dismissed. *Id.*

The ALJ's Order Dismissing Petition for Rehearing included accurate appeal instructions, and included a certification that it was mailed to the listed interested parties (including Appellants) on October 27, 2009. Therefore, the deadline for filing an appeal with the Board was November 27, 2009 (in this case, 31 days later, because the 30th day fell on a Federal holiday, *see* 43 C.F.R. § 4.310(c)(2)). Appellants did not mail their appeal to the Board, but instead sent it to the ALJ, who forwarded it to the Board, and to which it was delivered on December 4, 2009, after the appeal deadline had expired. *See* 43 C.F.R. § 4.310(a) (date of filing is date of mailing or date of personal delivery to the Board). It is well-established that an appellant who fails to follow accurate appeal instructions bears the risk that the appeal will be untimely. *See, e.g., Estate of Preston Toledo*, 51 IBIA 3 (2009); *Estate of Douglas Keams*, 37 IBIA 111 (2002); *Reeves v. Anadarko Area Director*, 25 IBIA 40, 41 n.1 (1993).

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.²

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

² Even if we did not find the appeal to be untimely, dismissal for lack of jurisdiction likely would still be appropriate. It appears that Appellants' sole contention is that subsection 2206(j)(2)(B)(iii) is invalid, as applied to them, because they were adopted in 1969, long before AIPRA became effective. The Board does not have jurisdiction to review the validity of a Federal statute. *See Navajo Resources, Inc. v. Acting Deputy Assistant Secretary - Indian Affairs (Operations)*, 10 IBIA 72, 77 n.4 (1982).