



INTERIOR BOARD OF INDIAN APPEALS

Estate of Priscilla Jean Marrietta

55 IBIA 6 (05/03/2012)



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 PRISCILLA JEAN) Order Docketing and Dismissing Appeals
MARRIETTA)
) Docket Nos. IBIA 12-092
) 12-094
)
)
) May 3, 2012

Joey Glenn Alonzo¹ and Yvonne Denise Contreras (Appellants) appealed from a Modification Order (Reopening Order), entered on February 24, 2012, by Administrative Law Judge (ALJ) Richard D. Hines in the estate of Priscilla Jean Marrietta (Decedent).² Appellants sent their appeals to the ALJ, who transmitted the appeals to the Board of Indian Appeals (Board). We docket but dismiss these appeals because the ALJ provided accurate appeal instructions for filing an appeal with the Board, and the appeals were not filed with the Board within the 30-day period allowed for filing an appeal following the Reopening Order.³

¹ Alonzo's notice of appeal states that it is also being filed on behalf of her sister, Michelle Joy Glenn, but it is only signed by Alonzo.

² Decedent was a Pima Maricopa (Gila River) Indian. The probate number currently assigned to Decedent's case in the Department of the Interior's probate tracking system, ProTrac, is No. P000024247IP. The original number assigned to the probate of Decedent's estate was IP PH 147I 94.

³ The Reopening Order left intact an Order Determining Heirs, dated September 23, 1996, even though the ALJ concluded that the original order misapplied Oklahoma law with respect to Decedent's trust property in Oklahoma by finding that Alonzo and Glenn were not heirs of Decedent because they had been adopted out. The ALJ concluded that Appellant Alonzo's petition for reopening was untimely because it was not filed within one year of her discovery of an alleged legal error in the Order Determining Heirs. *See* 43 C.F.R. § 30.243(a)(3)(ii). The ALJ also found that no manifest injustice would occur if the Order Determining Heirs was allowed to stand. *See* Reopening Order at 2.

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. 43 C.F.R. § 4.321(a); *Estate of Franklin Porter*, 52 IBIA 243, 244 (2010); *Estate of John Kenneth Flood*, 51 IBIA 225, 225 (2010). The effective date of filing a notice of appeal with the Board is the date of mailing (if sent by U.S. mail) or the date of personal delivery (if not mailed). 43 C.F.R. § 4.310(a). Untimely appeals must be dismissed. *Id.* § 4.321(a); *Estate of Porter*, 52 IBIA at 244; *Estate of Flood*, 51 IBIA at 225.

The ALJ's Reopening Order included accurate appeal instructions and included a certification that it was mailed to the listed interested parties (including Appellants) on February 24, 2012. Calculated from that mailing date, the deadline for filing an appeal with the Board expired on March 26, 2012.⁴ Appellants did not mail their appeals to the Board, but instead sent the appeals to the ALJ, who transmitted them to the Board, which received them on April 13, 2012.⁵ The appeals were filed with the Board after the 30-day deadline expired and thus must be dismissed for lack of jurisdiction.

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 these appeals but dismisses them as untimely.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

⁴ The 30th day after the date the decision was mailed was a Sunday. When the last day for filing a document with the Board falls on a Saturday, Sunday, or holiday, the time period is automatically extended to the next business day, which in this case was Monday, March 26, 2012. 43 C.F.R. § 4.310(c)(2).

⁵ The postmarks on the envelopes in which Appellants' notices of appeal were sent to the ALJ show that the notices of appeal were not even sent to the ALJ before the 30-day deadline for filing an appeal with the Board had expired.