



INTERIOR BOARD OF INDIAN APPEALS

Estate of Ralyen or Rabyea Voorhees

1 IBIA 62 (02/12/1971)

Estate of Ralyen or Rabyea Voorhees
Decided February 12, 1971

IBIA 70-3 (Supp.)

Indian Probate: Rehearing: Generally

A petition for rehearing which fails to conform to the requirements of the regulations in either form or substance is properly denied.

Indian Probate: Rehearing: Pleading, Timely filing

A petition for rehearing must be physically delivered to the Superintendent on or before midnight of the sixtieth day following the Examiner's issuance and mailing of the final order in a probate if the same is to be treated as timely filed.

Indian Probate: Appeal: Timely filing

When it appears an appeal is based upon a petition for rehearing void as not timely filed, the Examiner's order denying such petition will be affirmed.



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF RALYEN OR RABYEA : Appeal Dismissed
VOORHEES :
: IBIA 70-3
Walker River Allottee No. 140 :
Deceased :
Probate No. F-53-69 : February 12, 1971

This matter comes on for consideration on an appeal from the Examiner's order of July 28, 1969 denying a petition for rehearing dated July 10 and filed July 11, 1969.

The appellant filed a petition for rehearing with the Examiner simultaneously with the filing of a notice of appeal with the Regional Solicitor in Sacramento, California. At that time the appeals were properly filed with the respective Regional Solicitors. ^{1/} This first appeal was disposed of by the decision in the Estate of Ralyen or Rabyea Voorhees, IA-L-2 (1969) wherein the appeal was dismissed as being premature arising from a non-appealable order, i.e., an order determining heirs rather than an order upon a petition for rehearing.

The Examiner's order denying the petition for rehearing was entered July 28, 1969, and was based upon the showing that the petition dated July 10, 1969 was filed with the Superintendent on July 11, 67 days after the issuance and mailing of the order

^{1/} Redlegation of Authority to Office of Hearings and Appeals, 35 FR 12081 (July 28, 1970).

determining heirs on May 5, 1969. In his order the Examiner cited as authority for his action sec. 15.17 of 25 CFR which is in part as follows:

(a) Any person aggrieved by the decision of the examiner of inheritance may, within 60 days after the date on which notice of the decision is mailed to the interested parties (or within such additional period as the Secretary, for good cause, may allow in any case), file with the superintendent a written petition for rehearing. Such a petition must be under oath and must state specifically and concisely the grounds upon which it is based . . .

It was held in the Estate of Jack Fighter, 71 ID 203 (1964) that under this regulation the petition must be in the hands of the Superintendent, not merely in the mail, on or before the 60th day, and that if it arrives by mail on the 61st day it is late filed subject to denial. It was held further in the Estate of Inez Agnes Gayton King, IA-D-1 Supp. (1967) that an unauthenticated telegram announcing an intent to file a notice of appeal is insufficient and that an appeal filed pursuant thereto but after sixty days will be dismissed.

The language of sec. 15.19 governing appeals is substantially identical to that governing petitions for rehearing in sec. 15.17, supra. It was held that the reasons for the rule in sec. 15.17 are the same as in sec. 15.19 and shall apply equally, Estate of Nicodemus, IA-1356 (1966).

The effect of the regulations and these decisions is to change sec. 15.16, 25 CFR from a permissive to a mandatory requirement that distribution shall be made upon the expiration of the 60 days. The said sec. 15.16 is as follows:

Distribution of an estate may be made by the superintendent after 60 days have elapsed from the date upon which notice of the decision is mailed to the interested parties unless, within that period, a petition for rehearing is filed pursuant to § 15.17 or unless otherwise directed by the Commissioner. (Emphasis supplied).

The regulation was so interpreted by the Superintendent as evidenced by the statement contained in the Examiner's order of July 28, 1969 denying the petition for rehearing. He said:

Moreover, the Nevada Agency in forwarding the said petition to the undersigned for disposition advised that distribution of the estate had been effected under date of July 8, 1969, in view of the fact that no petition for rehearing had been filed within the 60-day period. (Emphasis supplied).

The Examiner did not dwell at all upon the inadequacies of the so-called petition for rehearing filed on the letterhead of Leonard P. Root, Attorney at Law, Hawthorne, California, which by its brevity permits a full quotation, as follows:

July 10, 1969

Supt. Nevada Indian Agency
Stewart, Nevada

Dear Sir:

Re: Probate #F-53-69 - Voorhees

It is requested herewith by Hazel Jewel Voorhees of Schurz, Nevada, by and through her attorney, Leonard P.

Root, Esquire, for a rehearing in regard to the Order Determining Heirs made in the matter of the Estate of Raylen Stanley Voorhees, Walker River Allot. # 140, May 5, 1969, and received by this office May 15, 1969.

This Petition is based upon the fact that Mrs. Voorhees was not represented by counsel at the hearing on March 6, 1969, at Schurz, Nevada, even though she desired such representation.

Respectfully submitted,

/s/ Leonard P. Root

LEONARD P. ROOT M.G. /s/
Attorney for Petitioner

It meets no single requirement of sec. 15.17, supra, pertaining to petitions for rehearing and the appeal should be dismissed for that reason alone if for no other.

IT IS ORDERED that pursuant to authority vested in the Board of Indian Appeals by the Secretary of the Interior, the matter has been properly conducted, decided, and reviewed. This decision is final for the Department. 35 FR 12081. The Examiner is affirmed and the appeal is dismissed.

//original signed
David J. McKee, Chairman
Board of Indian Appeals

Concur:

//original signed
James M. Day, Member of the
Board of Indian Appeals

February 12, 1971