



INTERIOR BOARD OF INDIAN APPEALS

Estate of Moses Squeoch Dick, Sr.

38 IBIA 56 (08/08/2002)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF MOSES SQUEOCH DICK, SR. : Order Docketing and Dismissing Appeal
:
: Docket No. IBIA 02-135
:
: August 8, 2002

On July 29, 2002, the Board of Indian Appeals (Board) received a letter dated July 19, 2002, from Elsie Dick (Appellant). The letter states: "I have written to the [Board] concerning my request to appeal the probate decision for my husband, Mose Dick, Sr.'s estate. To this date I have received no response from the Board * * * acknowledging my request for appeal." Other information in the July 19, 2002, letter indicated that the document to which Appellant referred was written in May 2002.

In May 2002, Appellant had another appeal pending before the Board. That appeal was decided on June 11, 2002. Dick v. Northwest Regional Director, 37 IBIA 279. After receiving Appellant's July 19, 2002, letter, the Board reviewed the case file in Dick. It found a letter from Appellant dated May 7, 2002, which it had considered to be a filing in Dick. However, upon rereading Appellant's May 7, 2002, letter in conjunction with her July 19, 2002, letter, the Board can see that Appellant may have intended her earlier letter to be a notice of appeal in the estate of Moses Squeoch Dick, Sr. (Decedent). It will therefore treat the May 7, 2002, letter as a notice of appeal.

Administrative Law Judge William E. Hammett issued a decision in Decedent's estate on September 11, 1992. That decision properly informed the parties that, if they disagreed with the decision, they had 60 days in which to file a petition for rehearing with the Administrative Law Judge. The Board contacted Judge Hammett's office and was informed that no petition for rehearing was filed in Decedent's estate. Therefore, Judge Hammett's probate decision became final for the Department in November 1992.

Appellant's present notice of appeal must be dismissed. Departmental regulations in 43 C.F.R. §§ 4.241 and 4.320 require that a petition for rehearing be filed with the Administrative Law Judge before the Board has authority to hear an appeal in a probate case. Because no petition for rehearing was filed, the Board lacks jurisdiction to review Judge Hammett's decision.

Furthermore, the Board sees no purpose that would be served by referring Appellant's notice of appeal to Judge Hammett for consideration as a petition for rehearing because any petition for rehearing filed at this time would have to be dismissed as untimely because much more than 60 days have passed since Judge Hammett issued his September 11, 1992, decision in Decedent's estate.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from Judge Hammett's September 11, 1992, decision is docketed but dismissed both for lack of jurisdiction and for being untimely.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge