



INTERIOR BOARD OF INDIAN APPEALS

Estate of Foster Gregorio Marruffo

45 IBIA 149 (08/07/2007)

Reconsideration denied:

45 IBIA 309



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 FOSTER GREGORIO)	Order Docketing Appeals, Dismissing
MARRUFFO)	Appeal No. 07-113, and Affirming
)	Denial of Rehearing in No. 07-114
)	
)	Docket Nos. IBIA 07-113
)	07-114
)	
)	August 7, 2007

On July 5, 2007, the Board of Indian Appeals (Board) received two letters, one from Eva Aguilar (IBIA 07-113) and one from Vincent Marruffo (IBIA 07-114) (Appellants).¹ Both letters seek review of an Order Denying Petition for Rehearing entered on April 30, 2007, by Administrative Law Judge Thomas F. Gordon (ALJ) in the estate of Foster Gregorio Marruffo (Decedent), deceased Luiseno-Pala Band of Mission Indians Indian, Probate No. P-00003-6090-IP. The order let stand an Order Determining Heirs entered on December 15, 2006, in which the ALJ determined that Decedent's heirs were his widow, eight surviving children, and two grandchildren. Appellant Marruffo, Decedent's son, argued on rehearing that Decedent was not the biological father of two of the children named as heirs in the Order Determining Heirs. The ALJ denied rehearing because Appellant Marruffo's petition for rehearing was untimely and because he had not provided any reasons for his failure to present his allegations at the probate hearing that he attended. We affirm the ALJ's denial of rehearing because Appellant Marruffo's petition for rehearing was untimely. We dismiss Appellant Aguilar's appeal because she has notified the Board that she did not intend to file a separate notice of appeal but wrote only in support of Appellant Marruffo's appeal.

¹ In her letter, Appellant Aguilar stated that she is "petitioning for the rehearing to [Decedent's] Probate." In his letter, Appellant Marruffo stated that he is "re-petitioning my order of Denying Petition of rehearing." By order dated July 10, 2007, the Board noted that it was treating the letters as two separate notices of appeal from the Order Denying Petition for Rehearing.

Appellant Aguilar (No. 07-113)

On July 10, 2007, the Board issued an order in which it noted that Appellant Aguilar may not have intended to file a separate notice of appeal, but instead intended her letter to be received as evidence in support of Appellant Marruffo's notice of appeal. The Board requested in the order that Appellant Aguilar submit a statement to the Board to clarify whether she is separately appealing the Order Denying Petition for Rehearing.

On August 3, 2007, the Board received a statement from Appellant Aguilar confirming that she did not intend to file a separate notice of appeal, but wrote in support of Appellant Marruffo's appeal. Accordingly, we dismiss her appeal.²

Appellant Marruffo (No. 07-114)

In its July 10, 2007, order, the Board also issued an order to show cause why the Order Denying Petition for Rehearing should not be summarily affirmed by the Board because Appellant Marruffo's petition for rehearing was untimely and because no explanation was provided for Appellant Marruffo's failure to raise his allegations at the probate hearing. The Order Determining Heirs issued on December 15, 2006, and Appellant Marruffo sent his petition for rehearing to the ALJ by facsimile transmission on February 26, 2007, and by mail on March 8, 2007.

On August 3, 2007, the Board received a response from Appellant Marruffo. He acknowledges that his petition for rehearing was untimely. However, Appellant Marruffo states that he had asked for guidance on how to file a petition for rehearing from BIA and several attorneys, but that he received the "runaround." Appellant Marruffo's Response to Board's Show Cause Order at 2. He maintains that he did not raise his allegations concerning the paternity of two of Decedent's children at the probate hearing because it is an "embarrassing family secret." *Id.* at 1. But he also asserts that he requested Appellant Aguilar to raise the issue at the hearing, and avers that she did so. Appellant Marruffo suggests that the ALJ did not adequately explore the paternity question at the hearing. He also repeats his argument that two of the children listed as heirs are not Decedent's biological children and he requests DNA testing.³

² Because these two appeals have been consolidated, Appellant Aguilar's letter will be part of the record of Appellant Marruffo's appeal.

³ The ALJ properly informed Appellant that he does not have authority to order DNA testing nor does this Board. *See Estate of Elijah Good Shield*, 42 IBIA 123, 129 n.4 (2006).

The ALJ correctly determined that Appellant Marruffo's petition for rehearing was untimely. Petitions for rehearing must be filed "within 60 days after the date on which notice of the decision is mailed to the interested parties." 43 C.F.R. § 4.241(a). The Order Determining Heirs and the Notice attached to the Order Determining Heirs (Notice) advised interested parties of the 60-day deadline. The Notice advised interested parties of the requirements of a petition for rehearing, and further provided "Failure to fully comply with the requirements of this notice and of 43 CFR 4.241 shall render the petition subject to dismissal without addressing the merits of the petition." (Emphasis in original).

Even if the date of the facsimile transmission were treated as the date of filing, Appellant Marruffo's petition for rehearing was untimely because February 26, 2007, is more than 60 days after December 15, 2006. Appellant Marruffo does not challenge the ALJ's finding that his petition for rehearing was untimely, but suggests that the 60-day deadline should be waived because of the difficulty he had in determining the requirements of a petition for rehearing. However, petitions for rehearing not filed within the 60-day period must be denied. *See* 43 C.F.R. § 4.241(c); *Estate of Joe Benally*, 41 IBIA 270, 272 (2005) (denial of a petition for rehearing that is not timely filed is mandatory). In addition, we note that the Notice clearly explained the requirements of petitions for rehearing and a copy of section 4.241 was provided with the Notice and the Order Determining Heirs. We therefore affirm the ALJ's denial of rehearing because Appellant Marruffo's petition was untimely.

Conclusion

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 dismisses Appellant Aguilar's appeal pursuant to her request and, as to Appellant Marruffo's appeal, affirms the Order Denying Petition for Rehearing on the ground that it was untimely.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge