INTERIOR BOARD OF INDIAN APPEALS

Estate of Theodora Whiteshirt

50 IBIA 204 (09/15/2009)

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 THEODORA WHITESHIRT	)	Order Docketing and Dismissing Appeal
	)	
	)	Docket No. IBIA 09-135
	)	
	)	September 15, 2009

On September 8, 2009, the Board of Indian Appeals (Board) received from Administrative Law Judge Richard L. Reeh (ALJ) a notice of appeal by Oveta Whiteshirt Lira (Appellant), pro se. Appellant appeals the Order of Modification on Reopening (modification order) entered on July 27, 2009, by the ALJ in the estate of Appellant's mother, Theodora Whiteshirt (Decedent), deceased Cheyenne & Arapaho Indian, Probate No. P000073653IP (formerly, Probate No. SP-801-0123). The modification order amended the May 3, 2004, Order Approving Will and Decree of Distribution (Order Approving Will) that ordered the distribution of all of Decedent's Indian trust assets to Decedent's eldest grandchild, Cheneya Ann Whiteshirt (Cheneya), without restriction. The modification order amended the Order Approving Will to qualify the distribution to Cheneya according to the terms of Decedent's will: If Cheneya died without issue, all of Decedent's trust property shall then be distributed in undivided equal shares to Decedent's granddaughters, Jennie Rose Whiteshirt and Penney Tracie Elizabeth Whiteshirt. Appellant challenges the ALJ's approval of Decedent's will as well as the modification of the devise to Cheneya.[1] We docket the appeal but dismiss it as untimely.

Under the Department of the Interior's probate regulations, 73 Fed. Reg. 67,256, 67,288 (Nov. 13, 2008) (eff. Dec. 15, 2008), *to be codified at* 43 C.F.R. § 4.321(a), an appeal from a probate judge's decision to reopen an estate must be filed with the Board within 30 days after the decision is mailed with accurate appeal instructions. Any appeal that is not filed by the 30-day deadline will be dismissed. *Id.; Estate of Daniel Temartz Sampson*, 49 IBIA 207, 208 (2009). In the present case, the modification order provided accurate appeal instructions, including the deadline for filing an appeal and the Board's correct address. The notice included a certification that the modification order was mailed

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[1] According to the Department of the Interior's probate tracking system, ProTrac, Cheneya died without issue on October 27, 2007. *Estate of Cheneya Ann Whiteshirt*, Probate No. P000065089IP.

to Appellant and to her counsel on July 27, 2009. Therefore, the time for filing an appeal expired on August 26, 2009.

Appellant did not send her appeal to the Board, but mailed it instead to the ALJ's office in Oklahoma City, Oklahoma. That office then mailed the appeal to the Board, where it was received on September 8, 2009, 13 days late.[2] Thus, the appeal was not filed with the Board within the 30-day deadline, *see* 43 C.F.R. § 4.310(a) (date of filing is the date of mailing or date of personal delivery), and "[w]e will dismiss any appeal not filed by this deadline," *see* 73 Fed. Reg. at 67,288, *to be codified at* 43 C.F.R. § 4.321(a). An appellant who fails to follow correct appeal instructions bears the risk that the appeal will not be timely filed. *See Sampson*, 49 IBIA at 208, and cases cited therein. Because Appellant's appeal was not timely presented to the Board, we dismiss the appeal.[3]

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 dockets but dismisses this appeal.[4]

I concur:

// original signed	// original signed
Debora G. Luther	Steven K. Linscheid
Administrative Judge	Chief Administrative Judge

[2] Even the envelope in which the appeal was mailed to the ALJ bears a postmark of August 27, 2009, which is outside the appeal period.

[3] Even if the appeal were timely, we would still lack jurisdiction to review Appellant's challenge to the approval of the will. That approval became final in 2004 when no petition for rehearing was filed, *see* 43 C.F.R. § 4.240(c) (2004), and the ALJ did not purport to reconsider that decision when he entered the modification order. Therefore, any challenge to the approval of the will would be outside the scope of an appeal from the modification order. *See Estate of David Martin Champagne*, 49 IBIA 209, 210 (2009).

[4] The notice of appeal suggests that Appellant may believe that the ALJ rewrote Decedent's will to "disinherit" Cheneya and to transfer Decedent's trust estate to Decedent's remaining two granddaughters. According to the modification order, it was Decedent herself who chose not to allow her Indian trust property to descend to Cheneya's heirs if Cheneya died without issue, *and* it was Decedent herself who chose Jennie Rose Whiteshirt and Penney Tracie Elizabeth Whiteshirt as her alternate heirs. The ALJ explained that this particular provision of Decedent's will inadvertently was omitted from the Order Approving Will, and he was correcting this "manifest error" in his modification order. Modification Order at 2.