



INTERIOR BOARD OF INDIAN APPEALS

Estate of Mary Louise Medina

51 IBIA 255 (05/07/2010)

Under the Department of the Interior’s probate regulations, 43 C.F.R. § 4.321(a), an appeal from a probate judge’s decision must be filed with the Board within 30 days after the date on which the decision was mailed with accurate appeal instructions. An appeal that is not filed within the 30-day deadline will be dismissed. *Id.* The date of filing an appeal with the Board is the date an appellant mails the appeal to the Board (i.e., sends it to the Board by U.S. mail) or the date of personal delivery (i.e., if delivered by other means). 43 C.F.R. § 4.310(a)(1); *Estate of John Kenneth Flood*, 51 IBIA 225, 225-26 (2010); *Estate of Barbara A. (Eteyan) Green*, 51 IBIA 27, 28 (2009). The Board has consistently held that an appellant who has been given correct instructions for filing an appeal with the Board, but sends an appeal to a different office instead, bears the risk that it will not be received by the Board within the appeal period. *Estate of Green*, 51 IBIA at 28.

In the present case, Appellant addressed and sent her notice of appeal to the Probate Hearings Division, rather than following the instructions in the IPJ’s notice accompanying her Order Granting Reopening. The Probate Hearings Division office in Aberdeen promptly transmitted the appeal to the Board by Federal Express overnight delivery, but it was not delivered to the Board until April 30, 2010, which was 31 days after the date of mailing of the Order Granting Reopening, as shown on the certification of mailing. Because Appellant’s notice of appeal was filed with the Board after the 30-day deadline expired, it is untimely and must be dismissed.

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 this appeal but dismisses it as untimely.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Sara B. Greenberg
Administrative Judge*

*Interior Board of Land Appeals, sitting by designation.