INTERIOR BOARD OF INDIAN APPEALS

Estate of Karen Pratt Tomahsah

54 IBIA 56 (9/13/2011)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
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ESTATE OF KAREN PRATT TOMAHSAH	)	Order Docketing and Dismissing Appeals
	)	
	)	Docket Nos. IBIA 11-131
	)	11-139
	)	
	)	September 13, 2011

John Eli Tomahsah and Keener Tomahsah (collectively, Appellants) separately appealed to the Board of Indian Appeals (Board) from an Order of Modification *nunc pro tunc* and Order Denying Petition for Rehearing (Rehearing Order), entered on June 8, 2011, by Administrative Law Judge (ALJ) Richard L. Reeh in the estate of Karen Pratt Tomahsah (Decedent), deceased Comanche Indian, Probate No. P000089148IP.[1] Appellants sent their appeals to the ALJ, who transmitted the appeals to the Board. We docket but dismiss these appeals because the ALJ provided accurate appeal instructions for filing an appeal with the Board, and the appeals were not filed with the Board within the 30-day period allowed for filing an appeal following the Rehearing Order.

An appeal from a probate judge's decision must be filed with the Board within 30 days from the date the decision was mailed with accurate appeal instructions. 43 C.F.R. § 4.321(a); *Estate of Franklin Porter*, 52 IBIA 243, 244 (2010); *Estate of John Kenneth Flood*, 51 IBIA 225, 225 (2010). Untimely appeals must be dismissed. *Id*.

The ALJ's Rehearing Order included accurate appeal instructions and included a certification that it was mailed to the listed interested parties (including Appellants) on June 8, 2011. Therefore, the deadline for filing an appeal with the Board was July 8, 2011. Appellants did not mail their appeals to the Board, but instead sent the appeals to the ALJ, who forwarded them to the Board. John's appeal was delivered on July 11, 2011, and Keener's appeal was delivered on July 21, 2011. Thus, both appeals were delivered to the

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[1] The Rehearing Order rejected John's argument that his half-siblings should not inherit from Decedent's estate. The ALJ concluded that the rules for intestate succession in the American Indian Probate Reform Act of 2004, *see* 25 U.S.C. § 2206, do not distinguish between full-siblings and half-siblings.

Board after the appeal deadline had expired. *See* 43 C.F.R. § 4.310(a) (date of filing is date of mailing or date of personal delivery to the Board). It is well-established that an appellant who fails to follow accurate appeal instructions bears the risk that the appeal will be untimely. *See, e.g., Estate of Franklin Porter*, 52 IBIA at 244; *Estate of Mary Louise Medina*, 51 IBIA 255, 256 (2010); *Estate of Preston Toledo*, 51 IBIA 3, 4 (2009); *Estate of Douglas Keams*, 37 IBIA 111, 111 n.1 (2002).

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 these appeals but dismisses them as untimely.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge