



INTERIOR BOARD OF INDIAN APPEALS

Estate of Margerate Arline Glenn

54 IBIA 191 (12/21/2011)

Petition for Reconsideration dismissed:

54 IBIA 270



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 MARGERATE ARLINE) Order Docketing and Dismissing Appeals
GLENN)
) Docket Nos. IBIA 12-018
) 12-028
)
)
) December 21, 2011

Roberta Two Elk and Semele Dee Plenty Wolf¹ (collectively, Appellants) separately appealed from an Order Denying Rehearing (Rehearing Order), entered on September 15, 2011, by Administrative Law Judge (ALJ) Richard D. Hines in the estate of Two Elk's mother and Plenty Wolf's grandmother, Margerate Arline Glenn (Decedent).² Appellants sent their appeals to the ALJ, who transmitted the appeals to the Board of Indian Appeals (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). 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 September 15, 2011. Appellants did not mail their appeals to the Board, but instead sent

¹ Plenty Wolf's appeal appears to have been prepared by Kimberly Craven, but it bears Plenty Wolf's signature.

² Decedent, a.k.a. Margerate Arline Two Elk, a.k.a. Marjorie Arline Glenn-Two Elk, was an Oglala Sioux. The probate number assigned to Decedent's case in the Department of the Interior's probate tracking system, ProTrac, is No. P000003622IP.

The Rehearing Order denied a petition for rehearing filed by Two Elk from an August 13, 2010, Decision on Remand by Indian Probate Judge Melanie M. Daniel, which was issued following the Board's decision in *Estate of Margerate Arline Glenn*, 50 IBIA 5 (2009).

the appeals to the ALJ, who forwarded them to the Board. The Board received Two Elk's appeal on October 21, 2011, and Plenty Wolf's appeal on November 3, 2011. Calculated from the September 15 mailing date, the deadline for filing an appeal with the Board expired on October 17, 2011.³ The appeals were filed with the Board after the deadline 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 243, 244 (2010); *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 docketed these appeals but dismisses them as untimely.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

³ The 30th day after the date the decision was mailed was a Saturday. When the last day for filing a document with the Board falls on a Saturday, Sunday, or holiday, the time period is automatically extended to the next business day, which in this case was Monday, October 17, 2011. See 43 C.F.R. § 4.310(c)(2).

The ALJ's office informed the Board that Plenty Wolf's copy of the Rehearing Order was re-mailed to her on September 23 at a new address provided by Plenty Wolf, after Plenty Wolf contacted the ALJ's office on September 22 to report that she had not yet received the decision. Even if the September 23 date of re-mailing were treated as triggering the 30-day deadline for Plenty Wolf's appeal, it would still be untimely because the appeal period would have expired on October 24.