



INTERIOR BOARD OF INDIAN APPEALS

Estate of Geraldine Begay

55 IBIA 249 (09/07/2012)

Denying Petition for Reconsideration of:
55 IBIA 216



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF GERALDINE BEGAY)	Order Denying Petition for
)	Reconsideration
)	
)	Docket No. IBIA 12-131-1
)	
)	September 7, 2012

On August 3, 2012, the Board of Indian Appeals (Board) dismissed as untimely an appeal by Loretta-Lynn Begay (Appellant) from a June 6, 2012, Modification Order to Add Omitted Property (Modification Order) in the estate of Geraldine Begay (Decedent).¹ 55 IBIA 216. On August 27, 2012, the Board received a petition for reconsideration from Appellant.

Reconsideration of a Board decision will be granted only in extraordinary circumstances. 43 C.F.R. § 4.315(a). A petition based on arguments already considered by the Board does not demonstrate extraordinary circumstances warranting reconsideration. *Star Lake Railroad Co. v. Navajo Area Director*, 15 IBIA 271 (1987).

In her petition for reconsideration, Appellant contends that she sent a copy of her notice of appeal to the Bureau of Indian Affairs (BIA) by facsimile (fax) before the deadline for filing an appeal expired, and that BIA “chose to wait” to transmit the appeal to the Board until after the deadline expired. Petition for Reconsideration at 1. Appellant also argues that the appeal instructions accompanying the Modification Order were incorrect and that fax filings have been sufficient for other pleadings filed in this matter. *Id.* at 1-2.

In our decision, we considered the accuracy of the IPJ’s appeal instructions. *See* 55 IBIA at 216. Appellant provides no grounds for us to reconsider that issue.² And regardless of whether Appellant was allowed to file other pleadings by fax in the

¹ The Modification Order was issued by Indian Probate Judge (IPJ) Thomas K. Pfister. The probate number assigned to Decedent’s case in the Department of the Interior’s probate tracking system, ProTrac, is No. P000095899IP.

² Appellant apparently contends that the appeal instructions were inaccurate because they provided the Board’s address in Arlington, Virginia. Appellant contends that the State of (continued...)

proceedings before the IPJ, as she apparently contends, the appeal instructions provided by the IPJ expressly stated—in accordance with the governing regulation, 43 C.F.R. § 4.323(a)—that “[t]he appellant shall personally deliver or mail the original notice of appeal to the Board of Indian Appeals.” Modification Order at 1.³ Appellant did not do so. Although we did not expressly address the effect of any purported delay in BIA’s transmittal of Appellant’s appeal to the Board, we have repeatedly held that an appellant who ignores explicit appeal instructions and files a notice of appeal in the wrong office bears the risks of delays in transmitting the notice of appeal to the Board. *See, e.g., Siemion v. Rocky Mountain Regional Director*, 48 IBIA 249, 256 (2009); *SiJohn v. Northwest Regional Director*, 46 IBIA 304, 305 (2008). Thus, any purported delay by BIA in transmitting the appeal to the Board does not provide grounds for reconsideration of our decision that Appellant’s appeal was untimely.

In summary, we conclude that Appellant has not demonstrated that any grounds exist to grant reconsideration.

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 denies reconsideration of 55 IBIA 216.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Debora G. Luther
Administrative Judge

(...continued)

Virginia has “not ever been part of the United States, but [an] original party to [the] United States of America.” Petition for Reconsideration at 1. Whatever distinction Appellant seeks to make, it is irrelevant to the accuracy of the IPJ’s instructions for where Appellant should have mailed or delivered her appeal.

³ As noted in our decision, the Board did not receive a faxed copy of the appeal from Appellant. The only copy received was that copy that Appellant faxed to BIA, which BIA transmitted to the Board. 55 IBIA at 217.