



INTERIOR BOARD OF INDIAN APPEALS

Estate of James Thompson

56 IBIA 30 (11/15/2012)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ESTATE OF JAMES THOMPSON	)	Order Docketing and Dismissing
	)	Appeal
	)	
	)	Docket No. IBIA 13-024
	)	
	)	November 15, 2012

Mary H. Watson (Appellant) appealed from an Order Denying Reopening (Reopening Order), entered on September 29, 2012, by Administrative Law Judge (ALJ) Earl J. Waits in the estate of James Thompson (Decedent).<sup>1</sup> Appellant sent her appeal to the ALJ, who transmitted the appeal to the Board of Indian Appeals (Board). We docket but dismiss this appeal because the ALJ provided accurate instructions for filing an appeal with the Board, and the appeal was not filed with the Board within the 30-day period allowed for filing an appeal following the Reopening Order.<sup>2</sup>

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). The effective date of filing a notice of appeal with the Board is the date of mailing (if sent by U.S. mail) or the date of personal delivery (if not mailed). 43 C.F.R. § 4.310(a). Untimely appeals must be dismissed. *Id.* § 4.321(a); *Estate of Porter*, 52 IBIA at 244; *Estate of Flood*, 51 IBIA at 225.

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<sup>1</sup> Decedent was Navajo. The probate number assigned to Decedent’s case in the Department of the Interior’s probate tracking system, ProTrac, is No. P000069541IP.

<sup>2</sup> According to the Reopening Order, the petition filed by Appellant alleged that the property Decedent inherited from the estate of Vivian Valdez Lopez (Lopez), No. IP-GA162G-71 and the estate of Cora Pablo Atencio (Atencio) should be removed from Decedent’s estate inventory and returned to the rightful heirs of Lopez because Decedent is not a biological relative of Lopez or Atencio. The ALJ denied the petition, finding that Lopez is Decedent’s grandmother, and that even if Appellant’s claim had merit, it still would be denied because any errors that occurred in the probate of Lopez’s and Atencio’s estates cannot now be remedied in Decedent’s estate.

The ALJ's Reopening Order included accurate appeal instructions and included a certification that it was mailed to the listed interested parties (including Appellant) on September 29, 2012. Calculated from that mailing date, the deadline for filing an appeal with the Board expired on October 29, 2012. Appellant did not mail her appeal to the Board, but instead sent the appeal to the ALJ, who transmitted the appeal to the Board, which received it on October 31, 2012. The appeal was filed with the Board after the 30-day deadline expired and thus must be dismissed for lack of jurisdiction.

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:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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//original signed  
Debora G. Luther  
Administrative Judge