



INTERIOR BOARD OF INDIAN APPEALS

Estate of Robert Marcel Vanderveer

56 IBIA 32 (11/15/2012)

Related Board case:  
59 IBIA 76



# 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 ROBERT MARCEL	)	Order Docketing and Dismissing
VANDERVEER	)	Appeal
	)	
	)	Docket No. IBIA 13-026
	)	
	)	November 15, 2012

Jillian Garza (Appellant) appealed from a Modification to Add and Distribute Omitted Property (Modification Order), entered on September 26, 2012, by Administrative Law Judge (ALJ) Earl J. Waits in the estate of Robert Marcel Vanderveer (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 Modification Order.<sup>2</sup>

---

<sup>1</sup> Decedent was a Cheyenne River Sioux. The probate number assigned to Decedent’s case in the Department of the Interior’s probate tracking system, ProTrac, is No. P000073908IP.

<sup>2</sup> The Modification Order provided for the distribution of several fractional trust interests in allotments on the Cheyenne River and Rosebud Reservations in South Dakota that had been added to Decedent’s estate inventory, and which constituted less than a 5% interest in the respective allotment. The ALJ ordered that those interests be distributed to Decedent’s oldest child, Amy Beth Nottingham, in accordance with the “single heir rule” of the American Indian Probate Reform Act (AIPRA), 25 U.S.C. § 2206(a)(2)(D)(iii)(I). In her notice of appeal, Appellant questions why the ALJ directed that these interests go solely to Amy, and contends that Decedent would have wanted the property to be divided equally between Decedent’s three children. AIPRA’s single heir rule provides that when an individual dies without a will and owning trust real property interests that constitute less than 5% in the respective allotment, those less-than-5% interests are distributed in full to a single heir. If a decedent has more than one surviving child, the single heir under AIPRA is the oldest child. *Id.*

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.

The ALJ's Modification Order included accurate appeal instructions and included a certification that it was mailed to the listed interested parties (including Appellant) on September 26, 2012. Calculated from that mailing date, the deadline for filing an appeal with the Board expired on October 26, 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 November 1, 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 docket this appeal but dismisses it as untimely.

I concur:

\_\_\_\_\_  
// original signed  
Steven K. Linscheid  
Chief Administrative Judge

\_\_\_\_\_  
//original signed  
Debora G. Luther  
Administrative Judge