



INTERIOR BOARD OF INDIAN APPEALS

Estate of Robert Robinette

56 IBIA 202 (02/21/2013)

Denying petition for reconsideration of:
56 IBIA 149

Appellant states that after receiving the Modification Order, he contacted the ALJ's office to correct the Modification Order and was told by office personnel that a mailing to the ALJ's office would be sufficient to correct the error. Thus, according to Appellant, he sent his request for a correction to the ALJ's office, which then transmitted the request to the Board as a potential appeal, which the Board then dismissed as untimely.⁴

As noted in our previous order, the regulations provide 30 days from the date of a probate judge's decision for an appellant to file an appeal with the Board, if the decision from which an appeal is filed contained accurate appeal instructions. In this case, the Modification Order did include accurate appeal instructions. Whether or not personnel in the ALJ's office may have suggested that the alleged error could be corrected by that office, i.e., without the need for an appeal, if Appellant wished to preserve his right to appeal to the Board, he still needed to file a timely appeal with the Board, as advised in written appeal instructions accompanying the Modification Order. We are not convinced that Appellant has demonstrated that extraordinary circumstances exist to compel us to conclude that Appellant's appeal was timely.

On the other hand, nothing in our dismissal of Appellant's appeal as untimely, or in this denial of reconsideration, precludes the ALJ from considering, on his own motion, or at the request of BIA, whether the Modification Order requires a correction. In this regard, we note that in addition to the evidence proffered by Appellant concerning Decedent's residency, the original decision in Decedent's estate found that Decedent's "last residence was in the State of Nebraska." Order Determining Heirs at 1 (Aug. 30, 1978). The Modification Order, which states that Decedent was "domiciled in Iowa on the date of death," does not purport to amend the portion of the Order Determining Heirs that concluded otherwise. Thus, it appears that there is an inconsistency between the Order Determining Heirs and the Modification Order that may warrant attention by the ALJ.⁵

(...continued)

distributed, in accordance with Iowa laws of intestate succession, to the estate of Decedent's wife, Mary J. Robinette.

⁴ The ALJ responded to Appellant by repeating the appeal instructions accompanying the Modification Order and advising Appellant that an appeal needed to be filed with the Board. The ALJ's response prompted Appellant to write to the Board to explain his delay. It is this letter from Appellant that the Board is treating as a petition for reconsideration.

⁵ It remains unclear whether there would be any substantive difference in the distribution of the additional trust personalty if Nebraska law is applied, instead of Iowa law. Appellant contends that the incorrect law was applied and that the error should be corrected, but he does not assert that he was adversely affected by the error.

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 56 IBIA 149.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Debora G. Luther
Administrative Judge