



INTERIOR BOARD OF INDIAN APPEALS

Estate of Zella S. Pugh

58 IBIA 218 (03/11/2014)



# 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 ZELLA S. PUGH	)	Order Affirming Denial of Rehearing
	)	and Referral of Inventory Dispute to
	)	Bureau of Indian Affairs
	)	
	)	Docket No. IBIA 14-014
	)	
	)	March 11, 2014

Earl S. Burley (Appellant) appealed to the Board of Indian Appeals from a September 3, 2013, Order Denying Petition for Rehearing and Referring Inventory Challenge (Order Denying Rehearing), issued by Administrative Law Judge (ALJ) Richard L. Reeh in the estate of Appellant’s mother, Zella S. Pugh (Decedent).<sup>1</sup> Appellant is an heir of Decedent, as determined in the ALJ’s July 31, 2013, Order Determining Heirs and Decree of Distribution, but he sought rehearing to address what he believes may be “a discrepancy in the amount of land apportioned to [Appellant’s] family and ancestors.” Order Denying Rehearing at 1. The ALJ concluded that Appellant was raising an inventory challenge that was outside of the ALJ’s probate jurisdiction, and thus the ALJ denied rehearing. The ALJ referred the matter to the Superintendent of the Pawnee Agency (Superintendent), Bureau of Indian Affairs (BIA), for resolution and issuance of a decision. We affirm the Order Denying Rehearing because the ALJ correctly concluded that he lacked jurisdiction over the inventory dispute, and that the matter must be referred to BIA. We note that on February 28, 2014, the Superintendent issued a decision, which concluded that BIA’s inventory for Decedent’s estate is correct. If Appellant believes that the Superintendent’s decision is erroneous, his remedy is to file an appeal to the Southern Plains Regional Director from the Superintendent’s decision.

Appellant’s appeal to the Board from the Order Denying Rehearing asserted that his great-great-grandfather, Mitchell Cerrie, a.k.a. Washcomoni, did not receive an allotment of land that he had been promised under the General Allotment Act. *See* Act of Feb. 8, 1887, 24 Stat. 388. Because it appeared that Appellant’s petition for rehearing, and his appeal, were limited to raising an inventory challenge that should properly be directed to BIA, the

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<sup>1</sup> Decedent was a Ponca of Oklahoma. Her probate is assigned Probate No. P000102174IP in the Department of the Interior’s probate tracking system, ProTrac.

Board ordered Appellant to clarify whether, and if so on what grounds, he contends the ALJ committed an error in the Order Denying Rehearing. The Board explained that “[u]nder 43 C.F.R. § 30.128, . . . if an inventory dispute arises during a probate proceeding, the dispute must be referred to BIA for issuance of a decision.” Order to Show Cause, Oct. 29, 2013 (OSC), at 2-3 (quoting *Estate of Laura Iron Ring*, 54 IBIA 265, 266 (2012)). “BIA’s decision is then subject to appeal under BIA’s appeal regulations found in 25 C.F.R. Part 2.” *Id.*

In response to the OSC, Appellant states that his allegation of error for the Order Denying Rehearing “is based on the premise and my findings that there is [a] discrepancy in the inventory” of Decedent’s estate. Letter from Appellant to Board, Jan. 10, 2014, at 1. Because it is clear that Appellant’s concern is limited to challenging the inventory of Decedent’s estate, it is also clear that the ALJ correctly referred the matter to BIA. Thus, we affirm the ALJ’s Order Denying Rehearing.

On February 28, 2014, the Superintendent issued a decision that addressed Appellant’s contentions, and concluded that BIA’s inventory, as submitted to the ALJ, is correct. As provided in the Superintendent’s decision, if Appellant believes that the Superintendent erred in concluding that the inventory is correct, his remedy is to file an appeal with the BIA Southern Plains Regional Director.<sup>2</sup>

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 affirms the Order Denying Rehearing.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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//original signed  
Thomas A. Blaser  
Administrative Judge

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<sup>2</sup> The appeal instructions in the Superintendent’s decision erroneously state that an appeal must be filed with the Regional Director. For appeals within BIA, an appeal from a superintendent’s decision is filed with the superintendent, *see* 25 C.F.R. § 2.9, although an appellant must also serve a copy of the notice of appeal on the regional director, *see id.* Under the circumstances, if Appellant files an appeal with either the Superintendent or the Southern Plains Regional Director within 30 days of his receipt of the Superintendent’s decision, the appeal must be considered timely.