



INTERIOR BOARD OF INDIAN APPEALS

Estate of Lillian Addell Corbine

59 IBIA 280 (12/18/2014)



# 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 LILLIAN ADDELL	)	Order Dismissing Appeal But Referring
CORBINE	)	Petition to Probate Hearings Division
	)	for Consideration as a Petition for
	)	Reopening
	)	
	)	Docket No. IBIA 15-034
	)	
	)	December 18, 2014

Cynthia Wooten (Appellant) appealed from an Order Denying Petition for Rehearing (Order Denying Rehearing) entered on October 24, 2014, by Administrative Law Judge (ALJ) Richard J. Hough in the estate of Lillian Addell Corbine (Decedent).<sup>1</sup> The ALJ denied a petition for rehearing submitted by Appellant, who alleged that she had located Decedent’s original will, because Appellant enclosed another copy of the will with her petition, but not the original itself.<sup>2</sup> Appellant sent her notice of appeal to the Department of the Interior’s Probate Hearings Division office in Bloomington, Minnesota (PHD). PHD transmitted the appeal to the Board of Indian Appeals (Board) because, as provided in the Notice accompanying the Order Denying Rehearing, appeals from the order must be filed with the Board. With her notice of appeal, Appellant submits Decedent’s original will and states that she did not previously send it to the ALJ because she was afraid it would be lost, and did not understand that failure to send the original to the ALJ would result in denial of rehearing. Notice of Appeal at 1.

We dismiss Appellant’s appeal, as an appeal from the Order Denying Rehearing, for being untimely. But because Appellant has provided Decedent’s original will, and the ALJ

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<sup>1</sup> Decedent, who was also known as Lillian Addell Bracklin, Lillian Addell Wooten, Lillian Addell Jennings, and Lillian Addell Butler, was a Lac Courte Oreilles Band of Lake Superior Chippewa Indian, Wisconsin. The probate number assigned to Decedent’s case in the Department of the Interior’s probate tracking system, ProTrac, is No. P000117172IP.

<sup>2</sup> In the original probate Decision entered on August 6, 2014, the ALJ disapproved, as a copy, Decedent’s May 26, 2007, will, and ordered that Decedent’s trust estate be distributed under the intestate succession provisions of the American Indian Probate Reform Act, 25 U.S.C. § 2206(a). Decision at 2-3.

would not have been precluded from considering Appellant's appeal as a petition for reopening, we refer this case to PHD for consideration of Appellant's appeal as a petition to reopen the estate.

### **Timeliness of Appellant's Appeal**

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). 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). *Id.* § 4.310(a); *see Confederated Tribes and Bands of the Yakama Nation v. Northwest Regional Director*, 56 IBIA 176, 181-82 (2013). The Board does not have authority to grant an extension for filing a notice of appeal, 43 C.F.R. § 4.310(d)(1), and untimely appeals must be dismissed, *id.* § 4.321(a). “[A]n appellant who fails to follow accurate appeal instructions bears the risk that the appeal will be untimely.” *Estate of Franklin Porter*, 52 IBIA 243, 244 (2010).

The Order Denying Rehearing included accurate appeal instructions and included a certification that it was mailed to the listed interested parties (including Appellant) on October 24, 2014. Calculated from that mailing date, the deadline for filing an appeal with the Board would have been November 23, 2014. However, November 23 was a Sunday, therefore, the deadline for filing an appeal with the Board expired on the next business day, which was Monday, November 24, 2014. *See* 43 C.F.R. § 4.310(c)(2). Appellant did not mail her appeal to the Board, but instead sent it to the ALJ, who transmitted it to the Board. The Board received the appeal on November 25, 2014.<sup>3</sup> Because the appeal was filed with the Board after the 30-day deadline expired, it must be dismissed as untimely and for lack of jurisdiction.

### **Consideration as Petition for Reopening**

In her correspondence sent to PHD, which as noted the Board has construed, for purposes of the Board's jurisdiction, as an appeal from the Order Denying Rehearing, Appellant states that she seeks a “rehearing.” Notice of Appeal at 1. Successive petitions for rehearing are not permitted. 43 C.F.R. § 30.241. Under the circumstances, it is

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<sup>3</sup> The Board also received a copy of the notice of appeal by e-mail. But the Board's regulations do not authorize filing a notice of appeal by fax or by electronic means, and thus the date of filing was the date the Board first received a hard copy of Appellant's appeal. 43 C.F.R. § 4.323(a); *Estate of Sammie DuBoise, Sr.*, 59 IBIA 233, 234 n.3 (2014); *Estate of Lincoln A. White Shirt, Jr.*, 58 IBIA 131, 132 n.4 (2013).

understandable why the ALJ referred Appellant’s correspondence to the Board without giving it further consideration as a petition for rehearing. But we also note that, once a probate judge issues an order finally disposing of a petition for rehearing, the jurisdiction of the probate judge terminates *except for* the issuance of necessary orders nunc pro tunc to correct clerical errors in the decision, and the *reopening* of a case. *Id.* § 30.241(a)-(b). In contrast, the Board does not have original jurisdiction to reopen an estate. *See* 43 C.F.R. § 4.320; *Estate of Phillip Whiteclay, Jr.*, 57 IBIA 53, 53 (2013); *Estate of Douglas Glenmore*, 57 IBIA 52, 52 (2013). Notwithstanding Appellant’s use of the term “rehearing,” we conclude that it is appropriate for the Board to refer Appellant’s correspondence, including Decedent’s original will, to PHD for consideration as a petition to reopen the estate.

### Conclusion

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 dismisses the appeal but refers the case to the Probate Hearings Division for consideration of Appellant’s appeal as a petition for reopening.

I concur:

          // original signed            
Thomas A. Blaser  
Administrative Judge

          //original signed            
Steven K. Linscheid  
Chief Administrative Judge