



INTERIOR BOARD OF INDIAN APPEALS

Estate of Nathan Raymond Thunder Hawk

59 IBIA 302 (01/08/2015)

The U.S. Postal Service's Track-and-Confirm service on its website indicates that Appellant received the Board's order on October 3, 2014. The Board has received no response from Appellant.

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. 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)(1); *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 ALJ's Rehearing Order included accurate appeal instructions and included a certification that it was mailed to the listed interested parties (including Appellant) on August 20, 2014. Calculated from that mailing date, the deadline for filing an appeal with the Board expired on September 19, 2014. Appellant did not mail his appeal to the Board, but instead sent it to the ALJ, who transmitted it to the Board. The Board received the appeal on September 26, 2014. Because the appeal was filed with the Board after the 30-day deadline expired, it must be dismissed for lack of jurisdiction as untimely. And, because Appellant did not respond to the Board's order, we also dismiss the appeal for failure to prosecute.

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 but dismisses this appeal.

I concur:

// original signed
Thomas A. Blaser
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge