



INTERIOR BOARD OF INDIAN APPEALS

Estate of Thomas Johnson, Sr.

62 IBIA 90 (01/08/2016)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ESTATE OF THOMAS JOHNSON, SR. ) Order Docketing and Dismissing  
) Appeal  
)  
) Docket No. IBIA 16-015  
)  
) January 8, 2016

Donald John Johnson (Appellant) appealed from an Order Denying Rehearing entered on September 24, 2015, by Administrative Law Judge (ALJ) James Yellowtail in the estate of Appellant’s father, Thomas Johnson, Sr. (Decedent).<sup>1</sup> Appellant sent his notice of appeal to the Department of the Interior’s Probate Hearings Division office in Albuquerque, New Mexico (PHD), which transmitted the appeal to the Board of Indian Appeals (Board).<sup>2</sup>

Because it appeared that Appellant’s appeal was untimely, the Board ordered Appellant to show cause why his appeal should not be dismissed.<sup>3</sup> In response, Appellant explains that he did not understand the Board’s appeal regulations and had “assumed” that,

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<sup>1</sup> Decedent was an Alaska Native. The probate number assigned to Decedent’s case in the Department of the Interior’s probate tracking system, ProTrac, is No. P000079558IP.

<sup>2</sup> The Order Denying Rehearing denied a petition for rehearing filed by Appellant, leaving in place the ALJ’s August 22, 2014, Decision, which determined that Decedent died intestate (i.e., without a will) and ordered that Decedent’s trust or restricted property estate be distributed in accordance with Alaska law of intestate succession. The ALJ concluded that Decedent’s surviving spouse, Myrtle Johnson (Myrtle), was entitled to receive the first \$150,000 of the estate property plus 1/2 of the remaining balance, if any. Decision at 2. The Decision found that Decedent’s estate included trust personalty and interests in 5 tracts of restricted land, having a combined appraised value of less than \$150,000, and thus Myrtle was entitled to receive Decedent’s entire estate. *Id.* at 2 & n.1.

<sup>3</sup> The Board also ordered Appellant to complete service of his notice of appeal on the interested parties, as required by 43 C.F.R. §§ 4.310(b) and 4.323, and to notify the Board that he had done so. Appellant has certified completion of service. Additionally, in response to a request by Appellant for legal assistance, the Board explained that it does not have authority to appoint counsel for an appellant.

by faxing his notice of appeal to PHD before the appeal deadline, he complied with the regulations. Response to Order to Show Cause, Dec. 30, 2015, at 1 (unnumbered). Appellant states that he is now “assuming” that PHD mailed the notice to the Board prior to the expiration of the appeal deadline. *Id.* at 2. In the alternative, if his assumption is incorrect, Appellant argues that PHD should have notified Appellant that he needed to mail the appeal to the Board. *Id.* He requests that the Board find that he “substantially complied” with the appeal regulations and that his appeal is timely. *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. The effective date of filing a notice of appeal with the Board is the date the appellant mails it to the Board (if sent by U.S. mail) or the date of personal delivery (if not mailed).<sup>4</sup> *Id.* § 4.310(a); see *Estate of Juan Evert Smith*, 60 IBIA 170, 170 (2015); *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). The Board has held in numerous cases that an appellant who fails to follow accurate appeal instructions, and sends an appeal to another office or to an incorrect address, bears the risk that the appeal will be untimely. See, e.g., *Estate of Agnes Irene Kitner*, 59 IBIA 145, 146 (2014) (dismissing as untimely an appeal sent to the probate judge, who forwarded it to the Board, and to which it was delivered after the appeal deadline had expired); *Estate of Franklin Porter*, 52 IBIA 243, 244 (2010) (same).

The Order Denying Rehearing included accurate appeal instructions and included a certification that it was mailed to the listed interested parties (including Appellant) on September 24, 2015. The instructions clearly stated that appeals must be filed with the Board, and provided the Board’s address. No separate understanding of the appeal regulations was required. Calculated from that mailing date, the deadline for filing an appeal with the Board expired on October 26, 2015.<sup>5</sup> Appellant did not mail his appeal to the Board, but instead faxed it to PHD on October 22, 2015, which transmitted it to the Board by private courier (FedEx). The Board received the appeal on November 17, 2015. 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.

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<sup>4</sup> Although not relevant in this case, the Board’s regulations do not authorize filing a notice of appeal by facsimile or by email. 43 C.F.R. § 4.323(a); see *Estate of Lincoln A. White Shirt, Jr.*, 58 IBIA 131, 132 n.4 (2013).

<sup>5</sup> The deadline would have expired on October 24, 2015, however, October 24 was a Saturday, and therefore the deadline was extended to the next business day, which was October 26, 2015. See 43 C.F.R. § 4.310(c).

We note that, in this appeal, Appellant argues that “the . . . probate of [D]ecedent’s estate property failed to list and value 12 restricted townsite lots in Golovin, Alaska,” and that “Appellant is entitled to a portion of [D]ecedent’s estate that is excess of \$150,000.” Response to Order to Show Cause at 2 (unnumbered).<sup>6</sup> To the extent that Appellant may be alleging that the inventory of Decedent’s estate, which was prepared by the Bureau of Indian Affairs (BIA), is incomplete, nothing in our decision is intended to preclude Appellant from requesting a decision, from BIA, regarding the completeness of the inventory. Nor is Appellant precluded by our decision from seeking reopening of Decedent’s estate, through a properly supported petition submitted to the ALJ. *See* 43 C.F.R. § 30.243 (May a closed probate case be reopened?).

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:

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// original signed  
Thomas A. Blaser  
Administrative Judge

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//original signed  
Steven K. Linscheid  
Chief Administrative Judge

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<sup>6</sup> Appellant attaches the ALJ’s April 22, 2015, Decision and the estate inventory in the probate of Myrtle’s estate, which lists 12 Golovin Townsite lots in which Myrtle “[a]cquired” a 1/2 interest from Decedent, through unspecified means.