



INTERIOR BOARD OF INDIAN APPEALS

Estate of Joseph Unizzam Berry

63 IBIA 96 (05/26/2016)



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 JOSEPH UNIZZAM)	Order Docketing and Dismissing
BERRY)	Appeal
)	
)	Docket No. IBIA 16-069
)	
)	May 26, 2016

On May 20, 2016, the Board of Indian Appeals (Board) received a notice of appeal from Gary L. Blackbird (Appellant), *pro se*, which was forwarded to the Board by the Department of the Interior’s Probate Hearings Division (PHD) office in Billings, Montana. Appellant seeks review of an Order Denying Petition for Rehearing (Order Denying Rehearing) entered on April 14, 2016, by Administrative Law Judge (ALJ), R. S. Chester in the estate of Appellant’s father, Joseph Unizzam Berry (Decedent), deceased Fort Belknap Indian, Probate No. P000113162IP. The Order Denying Rehearing let stand the ALJ’s October 30, 2014, Decision in which the ALJ approved Decedent’s will executed on December 31, 2009, and ordered the distribution of Decedent’s trust estate in accordance with the will.¹ We docket but dismiss this appeal because the ALJ provided accurate instructions for filing an appeal with the Board and Appellant did not file his appeal with the Board within the 30-day period allowed following the Order Denying Rehearing.²

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). *Id.* § 4.310(a). 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 Thomas Johnson, Sr.*, 62 IBIA 90, 91

¹ The petition for rehearing was filed by Lori Jo Berry, who objected to the will, in which Decedent devised all of his trust estate to one son, Richard William Berry.

² Appellant’s appeal does not indicate that it was served on interested parties, as required by 43 C.F.R. §§ 4.310(b) and 4.323. Because we summarily dismiss this appeal as untimely, we have not required Appellant to complete this service requirement.

(2016); *Estate of Franklin Porter*, 52 IBIA 243, 244 (2010); *Estate of Arlen D. Houle*, 42 IBIA 253, 253-54 (2006) (and cases cited therein).

In the present case, the Order Denying Rehearing was accompanied by a notice stating that any appeal “shall be filed with the Board,” and providing the Board’s correct address, in Arlington, Virginia. The notice includes a certification that it was mailed to the listed interested parties (including Appellant) on April 14, 2016. Calculated from that mailing date, the deadline for filing an appeal with the Board expired on May 16, 2016.³ Appellant mailed his notice of appeal to PHD in Billings, Montana, instead of mailing it to (filing it with) the Board at the Board’s address, and PHD forwarded the appeal to the Board. Despite the diligent efforts of employees in Judge Chester’s office to forward the notice of appeal to the Board, the Board received the appeal on May 20, 2016, after the 30-day deadline for filing an appeal had expired. Because the appeal was not timely filed with the Board within the 30-day time period, it must be dismissed.

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 this appeal, but dismisses it for lack of jurisdiction because it is untimely.

I concur:

// original signed
Thomas A. Blaser
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge

³ The deadline would have expired on May 14, 2016, however, May 14 was a Saturday, and therefore the deadline was extended to the next business day, which was May 16, 2016. *See* 43 C.F.R. § 4.310(c).