



INTERIOR BOARD OF INDIAN APPEALS

Estate of Delores Ann Red Eagle

63 IBIA 163 (06/06/2016)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
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ARLINGTON, VA 22203

ESTATE OF DELORES ANN RED)	Order Docketing and Dismissing
EAGLE)	Appeal
)	
)	Docket No. IBIA 16-050
)	
)	June 6, 2016

Elmer S. Red Eagle, Sr. (Elmer) and Lawanda D. Red Eagle (Lawanda) (collectively, Appellants) appealed to the Board of Indian Appeals (Board) from an Order Denying Rehearing in Part, Granting Rehearing in Part, and Correcting Decision (Rehearing Order) entered on February 23, 2016, by Administrative Law Judge (ALJ) R. S. Chester in the estate of Elmer’s spouse and Lawanda’s mother, Delores Ann Red Eagle (Decedent).¹ The Rehearing Order granted in part and denied in part a petition for rehearing submitted by Elmer.² In their notices of appeal, Appellants argued that Theodore, Deanna Red Eagle, and Francis Youngman (Francis)³ are not children of Decedent’s predeceased son, Harvey Red Eagle, and thus are not heirs.

On receipt of the appeal,⁴ the Board ordered Appellants to complete service of their notices 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 they had done so. In addition, because it appeared that the appeal was untimely, the Board ordered Appellants to show cause (i.e., explain) why the

¹ Decedent was also known as Delores Ann Shyface and was a Fort Peck Indian. Her probate is assigned Probate No. P000119018IP in the Department of the Interior’s probate tracking system, ProTrac.

² Specifically, the Rehearing Order modified, to correct an inadvertent error, the ALJ’s initial Decision issued on September 29, 2014, by removing Theodore Youngman (Theodore) as an heir. The Rehearing Order also granted in part and denied in part a request by the Bureau of Indian Affairs to add property to the estate inventory.

³ The Decision did not include Francis as an heir to Decedent’s estate.

⁴ Because the notices of appeal were mailed together and appeared to raise the same issues, they were considered for purposes of the Board’s pre-docketing notice as one appeal.

appeal should not be dismissed.⁵ The Board set a deadline of May 6, 2016, for Appellants to comply with the Board's order, and advised Appellants that if they failed to comply with or respond to the Board's order, the appeal might be dismissed without further notice.

The U.S. Postal Service's Track-and-Confirm service on its website indicates that both Appellants received the Board's order on April 4, 2016. The Board has received no response from Appellants.

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 the appeal for failure to prosecute.

I concur:

// original signed
Thomas A. Blaser
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge

⁵ Pre-Docketing Notice, Order for Appellants to Serve Interested Parties, and Order for Appellants to Show Cause, Apr. 1, 2016, at 2-4.