INTERIOR BOARD OF INDIAN APPEALS

Estate of Reno Fred Robinson

63 IBIA 202 (07/06/2016)

# 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

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| ESTATE OF RENO FRED ROBINSON | ) | Order Docketing and Dismissing |
| | ) | Appeal |
| | ) | |
| | ) | Docket No. IBIA 16-085 |
| | ) | |
| | ) | July 6, 2016 |

On June 27, 2016, the Board of Indian Appeals (Board) received a notice of appeal from Judy Red Boy (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 Modifying Decision Based on Petition for Rehearing (Rehearing Order) entered on May 13, 2016, by Administrative Law Judge (ALJ) R. S. Chester in the estate of Appellant's brother, Reno Fred Robinson (Decedent), deceased Fort Peck Indian, Probate No. P000116672IP.[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 her appeal with the Board within the 30-day period allowed following the Rehearing Order.

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 an appeal with the Board is the date of mailing it to the Board (if sent by U.S. mail) or the date of personal delivery (if not mailed). *Id.* § 4.310(a)(1). Untimely appeals must be dismissed. *Id.* § 4.321(a). It is well established

[1] The petition seeking rehearing was filed by Intriga Wounded Head, who had participated in the initial probate hearing and claimed at that time that she was Decedent's biological daughter. The ALJ determined that the evidence produced at the hearing was insufficient to establish her claim of parentage. The ALJ's September 19, 2014, decision (Decision) therefore found that Decedent had never married and had no children at the time of his death, and distributed his trust estate accordingly, with trust personalty and certain interests in trust or restricted lands descending to Decedent's 11 siblings, including Appellant. On rehearing, the ALJ found that Intriga's testimony, and additional evidence supporting her claim, was sufficient to establish, by a preponderance of the evidence, that Intriga is Decedent's daughter. The Rehearing Order modified the Decision, finding Decedent did in fact have a daughter, Intriga, and distributed all of Decedent's trust estate solely to her.

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

In the present case, the Rehearing Order was accompanied by a notice stating that any appeal "shall be filed with the Board," and providing the Board's correct address. The notice includes a certification that it was mailed to the listed interested parties (including Appellant) on May 13, 2016. Calculated from that mailing date, the deadline for filing an appeal with the Board expired on June 13, 2016.[2] Appellant mailed her 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. The Board received the appeal on June 27, 2016, after the 30-day period for filing an appeal had expired.[3] Because the appeal was not timely filed with the Board, 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 dockets this appeal, but dismisses it for lack of jurisdiction because it is untimely.

I concur:

| // original signed | //original signed |
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| Robert E. Hall | Steven K. Linscheid |
| Administrative Judge | Chief Administrative Judge |

[2] The 30-day period would have ended on Sunday, June 12, 2016, a nonbusiness day, and was therefore carried over to the end of the next business day, which was June 13, 2016. *See* 43 C.F.R. § 4.310(c)(2).

[3] Appellant's notice of appeal and the postmark on the envelope containing Appellant's notice of appeal both bear the date June 14, 2016, so even if it had been mailed to the Board at the address provided in the ALJ's appeal instructions, it would still have been untimely.