



INTERIOR BOARD OF INDIAN APPEALS

Estate of Lucille Mathilda Callous Leg Ireland

1 IBIA 67 (03/19/1971)

Also published at 78 Interior Decisions 66

Related Board case:
6 IBIA 120

Estate of Lucille Mathilda Callous Leg Ireland

IBIA 71-6

Decided March 19, 1971

Indian Probate: Rehearing: Generally

Regardless of procedural technicalities involved in the adjudication of petitions for rehearing in administrative proceedings, administrative tribunals should give the same priority toward securing a "just result" as is required of the courts in their proceedings.

Indian Probate: Hearing Examiner

In the course of conducting an administrative proceeding, the Hearing Examiner should not assume the role of an adversary or advocate; but he owes a duty, as judge and inquisitor, particularly when a party is not represented by counsel, to elicit for the record all the material facts, both favorable and unfavorable, bearing on the contentions of that party.

Indian Probate: Code of Federal Regulations: Interpretation and Construction

The requirement of clear and convincing proof of a promise to pay for care and support, under 25 CFR 15.23(d), may be fulfilled by oral testimony without the corroboration of documentary evidence.

Indian Probate: Administrative Procedure Act: Applicability to Indian Probate

The requirement of the Administrative Procedure Act, that all decisions of an Examiner shall include a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record, is mandatory and applicable to all decisions of Examiners in Indian probate proceedings.



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

In the Matter of the Estate of)	
)	
LUCILLE MATHILDA CALLOUS LEG)	Probate No. D-143-68
IRELAND,)	
Deceased Standing Rock)	Docket No. IBIA 71-6
Enrollee No. 6418)	

DECISION ON APPEAL REVERSING ORDER DENYING PETITION FOR REHEARING

March 19, 1971

The probate of the estate of Lucille Mathilda Callous Leg Ireland, of the Standing Rock Indian Reservation, was the subject of a hearing, held October 29, 1968. The Examiner determined that the estate of the decedent should be awarded to her only heir, Phyllis K. Ireland, a daughter, and denied a claim filed by Mrs. Laura Silk, the appellant herein, based on an alleged promise to pay for the care and support of Phyllis. The primary question raised by this appeal is whether Mrs. Silk, an unsophisticated person not previously represented by counsel, has been given adequate opportunity and assistance in stating and supporting her claim. We think she has not.

Mrs. Silk's claim was presented by an Affidavit in Support of Claim prepared by filling in blanks on a mimeographed form and attaching thereto three paragraphs in the handwriting of the Claimant.

The handwritten attachment states:

I have taken care of Phyllis Ireland since she was 2 years old April 1953.

2 drunken women bought her to my home one evening and left her there. one woman said she don't want her because she eats too much and the other woman said she was going to Montana and she don't bother with her. so the next morning I took her to the Welfare Sioux County Welfare. and they told me to keep her for 3 days and 3 days, 3 mo. 3 years. so the Sioux County Welfare start paying me for care, broad & room for 10 years and the last 6 years I support her and now she is 18 years old. and she is not well. she is deaf on one ear. T.B. sat on one ear and 1958 they removed her ear drum.

The last 6 years I took care for \$60.00 a mo The mother Lucille Callous Leg Ireland promise to pay and she never paid. and I am still taking care of her. (sic)

The Claimant, whose full Indian name is Laura Yellow or Fast Horse Silk, appeared at the hearing in person without counsel and was questioned exclusively by the Examiner. The only questions and answers relating to the merits of Mrs. Silk's claim initially appearing in the record are as follows:

Q. You have been the foster mother of Phyllis Ireland: is that true?

A. Yes.

Q. Is it correct that she was born April 4, 1950?

A. She was born April 29.

Q. We will change the date to April 29.

Q. She is the daughter of Lucille Mathilda Callous Leg Ireland?

A. Yes.

Q. The record will show that Mrs. Laura Silk has filed a claim for care at \$60 a month for Phyllis from the time she was 12 until she became 18 years of age, for a total amount of \$4,320. There is no agreement on file; there is an allegation by Mrs. Silk that the mother, Lucille, promised to pay, but there is nothing to show how much she promised to pay. * * *

After the hearing, on November 13, 1968, the Examiner published an Order Determining Heirs, by which the claim of Laura Silk was disallowed, "for the reason that no proof was offered of an agreement with respect to compensation" for the board, room, and general care of Phyllis K. Ireland, daughter of the decedent.

A Petition for Rehearing, signed and filed by Mrs. Silk on January 10, 1969, indicated that her allegation of a promise or agreement to pay for Phyllis's care and support could be substantiated by the testimony of two witnesses. Although her Petition noted that she was submitting the "depositions" of these two witnesses, the documents were actually in the form of affidavits. The affidavit of one of the witnesses, George A. Hawk, recites his personal knowledge of the family of the decedent and strongly corroborates the position of the claimant that an agreement did in fact exist. The affidavit states that the decedent had asked the affiant to sell some land in which both he and the decedent had an interest, so that a settlement could be made between the decedent and Laura Silk for the care of Phyllis. The affidavit of the second witness, one Leo Cadotte, appears neither to corroborate nor discredit the claimant's allegation.

An Order Denying the Petition for Rehearing was issued on April 14, 1970. This order, in the form of a decision, contained the following analysis:

In her claim filed prior to the hearing, the petitioner asked \$60.00 a month for 6 years or a total of \$4,320.00 and stated therein that the decedent promised to pay her but did not do so. Her petition for rehearing asserts an entirely different claim -- that the decedent had agreed to pay \$22.25 per month from April 1953 to June 1968, or 194 months, or a total of \$4,316.50. She gives no explanation for the changed amount per month and the changed period of time as bases for the claim. Would the petitioner have us believe that she and the decedent entered into alternative agreements?

Neither affidavit in support of the petition corroborates the petitioner's assertion of an agreement such as alleged by the petitioner. Her assertion, as corroborated by the affidavit of George Afraid of Hawk, that the decedent was going to pay for the care of the child out of proceeds from a land sale was not mentioned at the hearings. It is a new allegation.

It is stated in 25 CFR 15.17(a) that if the petition is based upon newly discovered evidence, it must state a justifiable reason for the failure to discover and present the evidence at the hearing. The petition failed to give any reason for not presenting such evidence at the hearing. Accordingly, it is not under consideration in this order. The petition is without merit.

In passing, it may be observed that the petitioner received adequate compensation from other sources for the care given decedent's daughter, a fact she deigned not to mention until confronted therewith at the hearing.

The Examiner said she denied the petition for rehearing; in fact, refused to consider it, because it did not state a justifiable

reason for the failure to discover and present evidence at the hearing. We consider such denial to be unduly harsh here. It is obvious that the claimant was not aware of the technical requirements and procedures necessary for a proper preparation or presentation of her claim, and was not so advised by the Examiner. It appears that claimant first learned of these technical requirements from the Examiner's order denying her claim. Then, when claimant attempted to comply upon a petition for rehearing, the Examiner ruled that no justifiable reason was given for not presenting her evidence properly at the first hearing.

The United States Supreme Court, in Ford Motor Company v. National Labor Relations Board, 305 U.S. 364 (1939), said, among other things, that it (the court) may adjust its relief to the exigencies of the case in accordance with equitable principles governing judicial action, and that "the purpose of the judicial review is consonant with that of the administrative proceeding itself -- to secure a just result with a minimum of technical requirements." See also James J. Williams, Inc. v. United States, 241 F. Supp. 535 (E.D. Wash. 1965); National Bus Traffic Association v. United States, 212 F. Supp. 659 (N.D. Ill. 1962); and Fleming v. Federal Communications Commission, 225 F. 2d 525, 526 (D.C. Cir. 1955).

In line with the reasoning of the foregoing authorities, we hold that this record, in toto, meets the justifiable reason requirement of 25 CFR 15.17(a). The claimant simply did not have the requisite knowledge, background, or understanding and was not represented by counsel. Under such circumstances, the specific allegations technically

required by the regulations may be inferred from the petition, the record, and the subsequent incidents and circumstances of the case.

We note also that the Examiner did not ask the basic questions of the claimant which would tend to corroborate the validity of her claim. For example, the question was not asked of claimant whether other persons had knowledge of a promise by decedent to pay for the care and support of the child, Phyllis Ireland. The claimant was not queried on the matter of how the amount of claim was determined. In fact there seems to have been no question of a probing nature asked which might have helped establish material facts supporting the claim of Laura Silk.

The Examiner who conducts an Indian probate hearing, just as an examiner in any other administrative proceeding, has a duty to develop a complete record. When necessary, he must assume the role of interrogator as well as judge, particularly when a party is not represented by counsel, and be extra careful to see that all relevant facts and circumstances, both favorable and unfavorable to a party or claimant be brought out. He has a duty, without assuming an advocate's role, to elicit from the witnesses any and all testimony which will allow a full and complete determination of the claimant's contentions. Coyle v. Gardner, 298 F. Supp. 609 (D. Hawaii 1969); Hodges v. Celebrezzi, 232 F. Supp. 419 (W.D. Ark. 1964).

In the present case, substantial evidence was offered supporting the existence of a promise or agreement to pay for care and

support. When all the facts are known, the evidence may fully meet the requirement of "clear and convincing" proof showing that the care was given on a promise of compensation and that compensation was expected, if not for the amounts previously claimed, perhaps for some other amount. (See 25 CFR 15.23(d)) The Examiner may have assumed that, as a matter of law, an agreement for compensation must be in writing or supported by written documents. The pertinent regulation does not require written evidence. "Clear and convincing proof" does not necessarily mean uncontradicted proof, and it is sufficient if there is proof of a probative and substantial nature carrying weight of evidence sufficient to convince ordinarily prudent-minded people. Clemens v. Richards, 304 Ky. 154, 200 S.W. 2d 156 (1947). This a higher degree of proof than is required under the ordinary rule of a preponderance of the evidence, but may not be stretched to require written evidence.

The initial decision below, and also the order denying rehearing, lack clearly enunciated findings of fact and conclusions of law. As discussed above, it is unclear whether the Examiner concluded that Mrs. Silk's claim, unsupported by written evidence, could not be considered. The order denying rehearing also criticizes the showing made by Mrs. Silk on the grounds that her offer of supplemental evidence (affidavits) was untimely, and observes "in passing" that Mrs. Silk had received adequate compensation from other sources. But

whether these passing observations were intended by the Examiner to be findings or conclusions is uncertain.

Findings of fact and conclusions of law should be clearly and succinctly incorporated in every examiner's decision in order to show the factual and legal support for the result reached. Our regulation, 25 CFR 15.15, not only requires this, but it was held in Estate of Charles White, IA-754 (March 27, 1963), that Indian probate adjudications fall within the provisions of the Administrative Procedure Act. The pertinent part of that Act, 5 U.S.C.A. § 557, provides:

(c) *** All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of --

(A) findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

Wherefore, pursuant to the authority vested in this Board by delegation from the Secretary, 35 F.R. 12081 (July 28, 1970), we reverse the order of Examiner denying claimant's petition for rehearing and remand this case for further proceedings consistent with this decision, but limited to the claim of Mrs. Laura Silk against the subject estate.

Board of Indian Appeals

//original signed
David Doane, Alternate Member

I Concur:

//original signed
James M. Day, Director
Office of Hearings and Appeals
Ex-officio Member