



INTERIOR BOARD OF INDIAN APPEALS

Estate of Morris A. (K.) Charles

3 IBIA 68 (09/12/ 1974)

Also published at 81 Interior Decisions 517

Related Board cases:

3 IBIA 56

3 IBIA 91

5 IBIA 96

Dismissed, *Confederated Tribes & Bands of the Yakima Indian Nation v. Kleppe*,
No. C-76-199 (E.D. Wash. May 27, 1977)

Earlier judicial case:

Stipulated remand, *Philip Brendale, as Executor of the Estate of Caroline B. Charles, Deceased v. United States*, Civil Action No. C-74-21 (E.D. Wash. June 28, 1974)



United States Department of the Interior

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

ESTATE OF MORRIS A. (K) CHARLES

(Yakima Allottee No. 4247, Deceased)

IBIA 75-13

Decided September 12, 1974

This is an order of reopening and remand to an Administrative Law Judge to correct error by the conduct of new and further proceedings.

Remanded.

1. Indian Probate: Reopening: Waiver of Time Limitation--Indian Probate: Secretary's Authority: Generally

Where it becomes necessary, the Secretary in the exercise of the discretion reserved in 43 CFR 4.5 and 43 CFR 4.242(h), may authorize or direct reopening of an Indian probate closed for less than three years for further proceedings necessary to the possible correction of an error or omission in the original probate.

2. Indian Probate: Yakima Tribes: Generally

Under the Act of December 31, 1970 (84 Stat. 1874); 25 U.S.C. § 607, it is necessary that an administrative law judge shall make a finding as to the right of the Yakima Tribe to take the interest of an heir or devisee and also a finding, after appraisal, of the fair market value of the interest which the Tribe elects to take.

APPEARANCES: Arthur W. Kirschenmann of the law firm of Kirschenmann, Devine, and Fortier, for Philip Brendale.

OPINION BY CHIEF ADMINISTRATIVE JUDGE MCKEE

This matter comes on for consideration as a proceeding collateral to and conducted in conjunction with consideration of the complaint filed in the United States District Court for the Eastern District of Washington, in the action entitled Philip Brendale as Executor of the Estate of Caroline B. Charles, Deceased v. the United States of America, et al., Civil Action No. C-74-21 filed February 1, 1974.

A stipulation entered into by the parties in this case is as follows:

IT IS HEREBY STIPULATED AND AGREED by and among the respective parties hereto through their respective counsel that at the request of the Interior Department the claim of the plaintiff be resubmitted to the Office of Hearings and Appeals in order that the same may be reconsidered by the Secretary of Interior.

IT IS FURTHER STIPULATED AND AGREED, as aforesaid, that the above-entitled action be held in abeyance pending final administrative action in accordance herewith.

DATED at YAKIMA, WASHINGTON this 28th day of June, 1974.

The proceedings herein are in furtherance of the purpose of the stipulation.

During her lifetime; Caroline B. Charles was the distributee of a 1/8 interest in the allotment of Mary Charles, deceased, Yakima Allottee No. 4244, described as the SW 1/4 of sec. 8, T. 7 N., R. 3 E., Willamette Meridian, Yakima County, Washington, containing 160 acres which had been devised to her by the will of Cecelia Smith (Borger), Yakima Allottee No. 4161, a sister of the decedent herein. Cecelia Smith (Borger) died July 28, 1958, at the age of 84 years, and her will dated September 14, 1957, was approved on May 15, 1959.

The will was approved as to the land devised to the said Caroline B. Charles under the authority vested in the Secretary of the Interior by the Act of June 25, 1910 (36 Stat. 855, 25 U.S.C.) § 372, as amended by the Act of February 14, 1913 (37 Stat. 678,

25 U.S.C. § 373, and pursuant to the Act of August 9, 1946 (60 Stat. 968 as amended, 25 U.S.C. § 607). The will was held to be inoperative under the Act of August 9, 1946, supra, insofar as it devised land on the Yakima Reservation to Mary (Andle) Andal.

The 1/2 interest in Cecelia's estate, including her 1/4 interest in the Mary Charles allotment was ordered distributed under the will to Caroline upon the following findings:

By the terms of decedent's purported will, dated September 14, 1957, she attempts to give her entire trust estate to her nieces, Caroline Charles, and Mary (Andle) Andal, daughters of Morris Charles.

Mary (Andle) Andal has been certified as not eligible to take the decedent's Yakima trust property by will.

The Act of August 9, 1946, supra, required that any one taking as heir or devisee of a person who died owning an interest in lands of the Yakima Reservation must qualify to take such interest by showing that he was enrolled in the Yakima Tribe and that he was of 1/4 blood of the Yakima Tribe. The Examiner of Inheritance then found that the part of the will devising an interest in Yakima land to Mary (Andle) Andal was inoperative and ordered that the interest should pass as intestate property to Morris Charles, a brother, the decedent herein, Cecelia's only eligible heir at law.

The record in that probate discloses that the Examiner had before him a certificate from the Superintendent of the Yakima Indian Agency, dated February 6, 1959, to the effect that Caroline Charles was enrolled and was of 1/4 Yakima blood. In ordering distribution under the will of Cecelia to her niece Caroline Charles he relied upon the certificate.

It now appears as part of the record in the probate in the estate of this decedent that the designation of Caroline Charles as being of 1/4 blood quantum of the Tribe was a matter which had been challenged and was, at the time of the entry of the above distribution order, on appeal. The Secretary issued a final decision dated April 11, 1969, in which the finding was made that Caroline Charles was only 1/8 Yakima blood. Under this decision it now appears that the full 1/4 interest owned by Cecelia Smith (Borger) in the allotment of Mary Charles, deceased, should have passed to Morris Charles the decedent herein as intestate property, he being the only eligible heir at law of this decedent capable of receiving title to the Yakima property pursuant to the Act of August 9, 1946, supra.

The foregoing certificate from the Superintendent of the Yakima Agency attached hereto as "Appendix A" and a copy of the Secretary's decision of April 11, 1969, supra, is attached hereto marked "Appendix B." It is here noted that "Appendix A" and the other records in

this probate show that this decedent, Morris A. (K) Charles was a Yakima enrollee No. 4247, and that he was of 1/4 Yakima blood.

The record in this probate further shows that Morris A. (K) Charles died testate on November 23, 1964, and that a hearing in the probate of his estate was held October 17, 1966. However, no decision in the matter of the approval of his will was issued until March 31, 1972, since the Examiner held the estate open pending the determination of the appeal regarding the blood quantum of Caroline Charles named as sole beneficiary in his will.

The entry of the Secretarial Order of April 11, 1969, supra, was not made known to the Examiner until March 24, 1972, see "Appendix C" a date subsequent to the passage of the Act of December 31, 1970 (84 Stat. 1874, 25 U.S.C. § 607 amending the Act of August 9, 1946, supra). The amendment of 1970 permitted inheritance of land by the heirs and devisees who were ineligible under the 1946 Act. But it provided that they take such land on the Yakima Reservation subject to the right of the Tribe to buy the lands upon payment of the fair market value as determined by the Secretary after appraisal.

The proceedings in this estate are related to like proceedings simultaneously initiated under separate orders of this Board in the Estate of Cecelia Smith (Borger), deceased, which will control the interest this decedent held at his death in the allotment of Mary

Charles. He is shown in this probate proceeding to have held only a 3/8 interest in the allotment which will be increased by a 1/8 if the proceedings in the Estate of Cecelia therein separately provided for confirm the record as it now appears before the Board.

Morris Charles named his daughter, Caroline Charles, as his sole devisee. Caroline Charles died testate June 25, 1972, and in her will approved by order of Judge R. J. Montgomery entered February 12, 1974, Philip Brendale, her son, was named executor and sole devisee. He is presently the apparent ultimate successor in interest or right in both the 3/8 and the 1/8 interests in the allotment of Mary Charles, deceased.

[1] A finding is made that this matter comes within the provisions of 43 CFR 4.5 and 43 CFR 4.242(h) and that the probate of this estate should be reopened by the Administrative Law Judge (formerly Examiner of Inheritance) having probate authority on the Yakima Reservation. The Judge shall afford the successor in interest of the 1/8 interest received from Caroline Charles, an opportunity to show good cause why the probate should not be reopened and the order of distribution in this estate should not be modified to include a 1/8 interest passing to Caroline B. Charles under the will of this decedent subject to the Act of December 31, 1970, supra.

[2] Attention is now directed to the decision of R. J. Montgomery, Hearing Examiner, at Portland, issued there in March 31, 1972, approving the will of this decedent. The order includes the finding:

Decedent's trust estate consisted of an undivided 3/8 interest in the allotment of Mary Charles, Yakima No. 124-4244 described as the SW 1/4 8, -7 N. - 13 EWM, in Washington, containing 160 acres.

The following portion of this decision will relate largely to the 3/8 interest mentioned in the order approving the will since the 1/8 interest heretofore mentioned was not included in the probate proceedings conducted prior to 1972. The 1/8 interest may be brought into this proceeding as a result of the anticipated modification of the order of distribution in the Estate of Cecelia Smith (Borger), deceased, Probate No. E 182-59.

In the decision of March 31, 1972, Examiner Montgomery approved the will and directed that the distribution of the entire estate [referring to the 3/8 interest in the inventory] be made in accordance with the will and his order:

To Caroline B. Charles, Yakima Allottee No. 124-4240 (born 2/5/06), daughter:

Decedent's entire Indian trust estate.

The decedent's interest in Yakima Indian trust property is subject to the option of the Yakima Indian Tribe, within 2 years from the date of this Order, to purchase the Yakima property from the devisee.* * *

Value of land: \$5,888.00.

The trust estate of said decedent subject to the jurisdiction of this Department having been appraised at \$5,888.00, a fee of \$65 will be collected by the Superintendent * * *.

In making the order approving the will and directing distribution the Examiner used the following language:

NOW, THEREFORE, by virtue of the power and authority vested in the Secretary of the Interior * * * the above-mentioned written instrument dated September 20, 1956, is hereby approved as the Last Will and Testament of the decedent above named, in accordance with section 7 of the Act of August 9, 1946 (60 Stat. 969, 25 U.S.C. § 607, as amended by the Act of December 31, 1970 (84 Stat. 1874)).

The Act of December 31, 1970, supra, provides in part as follows:

Sec. 7(a) A person who is not an enrolled member of the Yakima Tribes with one-fourth degree or more blood of such tribes shall not be entitled to receive by devise or inheritance any interest in trust or restricted land within the Yakima Reservation * * *, if while the decedent's estate is pending before the Examiner of Inheritance, the Yakima Tribes pay to the Secretary of the Interior, on behalf of such person, the fair market value of such interest as determined by the Secretary of the Interior after appraisal. * * *

* * * * *

Sec. 2. The provisions of section 7 of the Act of August 9, 1946, as amended by this Act, shall apply to all estates pending before the Examiner of Inheritance on the date of this Act, * * *. (Emphasis supplied.)

It is noted that the Order Approving the Will here does not conform to the statutes in that at no point is a finding made that Caroline Charles, the sole devisee in the will lacks enrollment or that she lacks a 1/4 blood quantum in the Yakima Tribe. The order is further deficient in that there is no finding as to the fair market value after appraisal. The only mention of an appraisal which is made in the order is that which refers to the value of the entire estate, and that which is set forth for the limited purpose of fixing a probate fee pursuant to 43 CFR 4.280.

Simultaneously upon issuance of the decision, a notice of the entry thereof was mailed to all the interested parties, and in the notice the following language is included:

This decision becomes final 60 days from the date of mailing of this notice unless within such period a written petition for rehearing shall have been filed with the Superintendent by an aggrieved party in accordance with the provisions of 43 CFR 4.241.

No petition for rehearing was filed.

The inventory of the estate over the signature of the Yakima agency realty officer appears of record and it describes a 3/8

interest in the allotment of Mary Charles, deceased, which is valued therein at \$5,888 and includes the statement "The above values are based on appraisal by staff appraisers of the Bureau of Indian Affairs," but no appraisal report was made a matter of record. The inventory does include the following statement:

March 24, 1972. I hereby certify that the foregoing is an accurate inventory, according to the records of the Yakima Indian Agency, Toppenish Washington, of the trust or restricted property or interests therein, owned by Morris A. Charles, Yakima Allottee No. 124-4247, at the time of his death November 23, 1964.

This language does not indicate what date was used as the controlling date for fixing the valuation given.

Without any further proceedings, on May 12, 1972, Examiner Montgomery issued a Supplemental Order of Distribution, wherein he made a finding that the Yakima Tribe acting by and through its Land Committee, had "* * * elected to purchase those certain trust properties, of the above entitled estate * * * said properties being more fully described in the inventory and appraisal attached hereto and by this reference made a part hereof * * *." He makes a further finding that certain documents had been filed including the said tribal election, "the appraisal" [sic] (inventory) and the voucher transfer of purchase money in the amount of \$5,880.10, in the hands of the Superintendent from the Tribal account to the

account of the estate, all in keeping with the provisions of the Act of December 31, 1970. He then stated:

IT IS HEREBY ORDERED, all right, title and interest in said trust properties as more fully described in the inventory attached hereto is vested in the Yakima Tribe, and the Superintendent of the Yakima Indian Agency shall cause to be made a distribution of the trust fund so deposited to the heir or devisee entitled thereto in keeping with the order of distribution of March 31, 1972, * * *.
(Emphasis supplied.)

On July 17, 1974, Philip Brendale, as the Executor of the Estate of Caroline B. Charles, deceased, filed a petition for reopening of this probate reciting that Caroline Charles, who was the sole devisee of this decedent, had died June 25, 1972, leaving a will by which she had named the petitioner as executor and as her sole devisee.

He alleges that the order of distribution in this estate issued March 31, 1972, required distribution of the 3/8 interest in the allotment of Mary Charles to the said Caroline subject to the Yakima Tribe's option to purchase. He further alleges that the appraisal for the purpose of fixing the probate fee in this estate was computed as of November 23, 1964, the date of death of this decedent; that the Administrative Law Judge confirmed the purchase on May 12, 1972, without hearing or notice to Caroline B. Charles, then still living; and that the only notice Caroline B. Charles received regarding the purchase

was that certain moneys had been credited to her account by the Superintendent.

The principal allegation is that at the time the tribe elected to take the interest from Caroline Charles, almost eight years after the death of this decedent, the value of the 3/8 interest to be taken had increased six-fold. He shows that no hearing or opportunity for the taking of evidence as to "fair market value" was provided.

The allegations in the petition for reopening are substantially the same as the allegations contained in the complaint in the civil action filed in the United States District Court, Brendale, Executor v. United States, supra. He asks that relief be granted and that the tribe be required to pay the fair market value as determined by an Administrative Law Judge after appraisal pursuant to the provisions of the Act of December 31, 1970, supra. But the pleadings are limited to the 3/8 interests in the allotment of Mary Charles, AL. 4244.

The following additional findings are made:

1. This proceeding is one where possible manifest injustice has occurred which may be corrected by further proceedings after reopening pursuant to 43 CFR 4.5 and 43 CFR 4.242(h).

2. If further proceedings in the Estate of Cecelia Smith (Borger), deceased Probate No. E 182-59, after reopening, confirm the record before the Board, the inventory of the interests in the allotment of Mary Charles vested in this decedent at his death will be increased by 1/8. The order of distribution therein will be modified nunc pro tunc accordingly making additional distribution of a 1/8 interest in the allotment of Mary Charles to this decedent.

3. The reopening of this proceeding will then be necessary and proper to make the additional interest available in this estate to the Yakima Tribe under the Act of December 31, 1970, supra.

4. Notice is taken of the record in the Estate of Caroline J. Charles (Brendale), deceased, Probate No. IP PO 48K 74, and the showing there that on February 28, 1974, the Yakima Tribe did elect to take the 1/8 interest in the allotment of Mary Charles as it appeared to vest in Caroline B. Charles by the will of Cecelia Smith (Borger), deceased, rather than by the will of Morris A. (K) Charles, the decedent herein.

5. Notice is taken that the Tribe has filed a general written election to take and pay for all interests which may become available to it on the Yakima Reservation under the provisions of the Act of December 31, 1970, supra. The date of taking of all of the

interests available in this estate nunc pro tunc is determined to be the date of the entry of the Supplemental Order of Distribution by Judge Montgomery on May 12, 1972.

6. No adequate opportunity has been afforded to the parties in interest herein to present evidence of the value of the land interests. Lacking a written and signed stipulation as to fair market value after appraisal a hearing should be held by Judge Montgomery, after notice of not less than 20 days, to receive evidence to support a finding and judgment of the fair market value of the decedent's entire 1/2 interest in allotment No. 4244 of Mary Charles to be determined as of the date of taking by the Tribe, May 12, 1972.

7. The funds from the Tribe heretofore received in the account of this estate should be credited to and considered to apply as payment or part payment of the fair market value for the decedent's entire 1/2/interest in the allotment of Mary Charles when the value is determined.

8. The title to the 3/8 interest in the allotment of Mary Charles included in the inventory of this Estate was vested in the United States in Trust for the Tribe by the Supplemental Order of Distribution entered on May 12, 1972.

9. The title to the additional 1/8 interest in the allotment of Mary Charles is vested in Philip Brendale as successor in interest under the will of Caroline J. Charles (Brendale), deceased, approved by the decision of Judge Montgomery on February 12, 1974, subject to the rights of the Tribe in this estate arising out of the Act of December 31, 1970, supra.

10. Within the scope of the inquiry permitted by the findings herein, nothing herein shall prevent proceedings to be conducted in this probate, simultaneously with those in the Estate of Cecelia Smith (Borger) and the Estate of Caroline J Charles (Brendale), nor shall anything herein prevent the successive entry of those orders, and decisions necessary to modify and correct all errors found in previous proceedings.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, it is ORDERED:

1. That the probate of the Estate of Morris A. (K) Charles, deceased, shall be reopened by Judge Montgomery except upon good cause shown for not doing so; and
2. That if this estate is reopened, Judge Montgomery shall,

(a) Forthwith issue an order to the Superintendent of the Yakima Agency to procure an appraisal by competent appraisers of the Allotment of Mary Charles No. 4244 described as the SW 1/4 sec. 8, T. 7 N., R. 13 E., Willamette Meridian, Yakima County, Washington, to determine its value as of May 12, 1972. There shall be a written appraisal report to be retained at the Yakima Agency subject to inspection and copying by interested parties. A summary shall be filed with the Judge and furnished by the appraisers and distributed to all parties in interest immediately upon the filing of the report;

(b) Mail a copy of the above order to the petitioner's attorney of record who may procure an independent appraisal report if he so desires, and a summary of any such report obtained by him shall be filed with the Judge and distributed to all parties in interest;

(c) Determine the fair market value of the interest shown to have been held by this decedent at his death after the filing of the appraisal report procured by the Superintendent and any report submitted by the petitioner. Fair market value may be determined upon stipulation entered into in writing and made part of the record; or if no stipulation is offered, he may make a determination after a full hearing, after notice, wherein each party shall have full opportunity to present evidence of value;

3. On August 30, 1974, new regulations were published in 39 F.R. 31635 in final form, effective September 30, 1974, as to all pending matters arising under the Act of December 31, 1970 (84 Stat. 1874; 25 U.S.C. § 607). These appear as a new addition to 43 CFR 4 subpart D beginning with § 4.300. After the effective date of these regulations, if the Tribe wishes to defer payment of the full amount of the fair market value beyond 20 days following entry of the decision as to value under the new regulations, it may timely petition the Judge for the entry of an order providing therefor.

IT IS FURTHER ORDERED that he shall issue a decision final for the Department subject to the right of appeal as provided in 43 CFR 4 subpart D, but the requirement for the filing of a petition of rehearing prior to appeal is waived.

This decision is final for the Department of Interior.

Done at Arlington, Virginia.

//original signed
David J. McKee
Chief Administrative Judge

I concur:

//original signed
Alexander H. Wilson
Administrative Judge

Attachments:

Appendix A
Appendix B
Appendix C

United States Department of the Interior
Office of The Secretary
Washington, D.c. 20240

IBIA 75-13
Tribal Operations
INDIAN

April 11, 1969

Dear Mr. Kirschenmann:

You have appealed from the Acting Assistant Commissioner of Indian Affairs' decision of August 6, 1968, which upheld the Acting Deputy Assistant Commissioner's affirmance of the action taken by the Yakima Tribal Council to lower the Yakima blood degree of Caroline B. Charles from 1/4 to 1/2 degree. You base your appeal upon your belief that the tribal council's action in correcting the degree of Yakima blood ascribed to your client was of a judicial nature rather than the mere rectification of a clerical error in the membership records.

As part of its internal sovereignty and in the absence of express statutory provisions or Federal regulations to the contrary, the Yakima Tribal Council has full power to correct clerical errors affecting the descent and distribution of the property of its members. More than that, the Yakima Tribal Council would be remiss in its responsibility to all of the tribal members were errors affecting the descent and distribution of property of the members not corrected. Nothing in the Act of August 9, 1946 (60 Stat. 969), which authorizes and directs the preparation of the Yakima membership roll, prohibits the tribal council from making corrections of clerical errors and the policy of the Bureau of Indian Affairs, as indicated in the Acting Assistant Commissioner's letter of August 6, would not operate to prohibit such corrections of clerical errors.

We concur in the Acting Assistant Commissioner's finding that the tribal council's procedure in changing Miss Charles' degree of Yakima blood was inadequate inasmuch as no follow-up attempt was made to locate her to advise her of the change. However, the responsibility for keeping tribal governing bodies advised of current addresses necessarily lies with the tribal members themselves and the Yakima Tribal Council cannot be held solely responsible for not knowing the whereabouts of your client. Your client apparently neglected to inform the postal authorities of her change of address and as a result, the letter addressed to her by the tribal council could not be forwarded to her. In any event, this lack of proper notification was remedied when Miss Charles was offered an opportunity to present evidence bearing on her blood degree to the Commissioner.

Your client was enrolled under the provisions of Section 1(a) of the Act of August 9, 1946, which pertains to the enrollment of Yakima allottees. That action does not require the minimum possession of any degree of Yakima blood as a prerequisite for enrollment.

Your contention that the Commissioner of Indian Affairs had confirmed Miss Charles' degree of Yakima blood by approving the supplemental roll which contained her name cannot be upheld. The Commissioner approved her enrollment because she was an original allottee and, therefore, met the provisions of Section 1(a).

The record indicates that in her application for enrollment with the Yakima Tribes dated July 27, 1935, your client claimed only 1/8 degree Yakima blood. The Yakima Tribal Enrollment Committee erred when it enrolled her as 1/4 degree Yakima and 1/4 degree Nisqually. When your client was notified by the Chairman of that committee on February 28, 1956, that her application had been accepted and that she was found to possess 1/4 degree Yakima and 1/4 degree Nisqually blood, she should have advised the enrollment committee of its error. The letter dated February 28, 1956, specifically allowed 30 days for correction to be made on the findings of the enrollment committee. Miss Charles did not advise the enrollment committee of its error and allowed that error to go uncorrected for years, accepting those benefits that should rightly have accrued only to those members of the Yakima Tribes who possessed at least 1/4 degree Yakima blood.

Based on the foregoing, we conclude that the determination of the Acting Assistant Commissioner should be sustained. Your appeal is dismissed.

Sincerely yours,

//original signed
Assist. Secretary of the Interior

United States
Department of the Interior
Office of the Solicitor
Washington, D.C., 20240
NOV 14, 1966

IBIA 75-12

Mr. Arthur W. Kirschenmann
Attorney at Law
303 E. "D" Street
Yakima, Washington

Dear Mr. Kirschenmann:

This replies to your letter of October 31, 1966, transmitting therewith an appeal by Caroline Charles, Yakima allottee No. 4240.

We have today referred this matter for appropriate disposition to the Commissioner of Indian Affairs, who has jurisdiction over proposed modifications in the blood quantum shown for individuals on the Yakima roll prepared pursuant to the Act of August 9, 1946, 60 Stat 963.

We are also sending a copy of this letter to Hearing Examiner Montgomery so that he will be advised that Miss Charles is appealing from the redetermination of her Yakima blood quantum and will therefore be able to coordinate his handling of the estate of Morris Charles with Miss Charles' appeal.

Sincerely yours,

//original signed

Duard R. Barnes
Assistant Solicitor
Appeals & Litigation

cc: BIA, Att'n: Tribal Operations,
with incoming correspondence,
for action indicated
Hearing Examiner Montgomery
For action indicated

3/31/72: This is the last information we have in the record regarding the appeal. However, Tribal Operations in the Central Office in Washington, D.C. advised this office on 3/24/72, that the appeal had been denied by the BIA.

R. J. Montgomery, Hearing Examiner