



INTERIOR BOARD OF INDIAN APPEALS

Estate of Wesley Emmett Anton

12 IBIA 139 (01/23/1984)



# United States Department of the Interior

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

## ESTATE OF WESLEY EMMETT ANTON

IBIA 83-26

Decided January 23, 1984

Appeal from a denial of rehearing issued by Administrative Law Judge S.N. Willett in Indian Probate IP PH 64I 82.

Reversed and remanded.

1. Attorneys--Indian Probate: Representation

The fact that an individual participating in a Departmental Indian probate proceeding is not represented by counsel does not entitle him to special rights not enjoyed by individuals who are so represented.

2. Indian Probate: Administrative Law Judge

An Administrative Law Judge in an Indian probate proceeding is generally not required to anticipate or discover additional legal arguments or evidence that might be beneficial to an individual's case.

3. Indian Probate: Administrative Law Judge--Indian Probate: Representation

When an individual participating in a Departmental Indian probate proceeding is not represented by counsel, the Federal trust responsibility, which is shared by the Administrative Law Judge conducting the proceeding, requires that the Administrative Law Judge ensure that manifest injustice is not committed, or if committed, is corrected.

4. Indian Probate: Claim Against Estate: Proof of Claim

The mere assertion by a Government agency that its records show that it has a claim against an Indian decedent's trust estate is insufficient to prove entitlement to the claimed amount.

5. Indian Probate: Administrative Law Judge--Indian Probate: Claim Against Estate: Allowable Items

The Administrative Law Judge conducting an Indian probate proceeding is required to ensure that all

claims against the decedent's trust estate are legally allowable before approving them for payment.

APPEARANCES: Eric Dahlstrom, Esq., Sacaton, Arizona, for appellant. Counsel to the Board: Kathryn A. Lynn.

#### OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Milton James Anton Juan (appellant) seeks review of a February 2, 1983, order denying rehearing issued by Administrative Law Judge S.N. Willett in the estate of Wesley Emmett Anton (decedent). The final order in the estate had been issued on December 7, 1982. Rehearing was requested in order to develop more fully a challenge to a claim made against decedent's estate by the Social Security Administration (SSA) for an alleged overpayment of supplemental security income (SSI) benefits to decedent during calendar year 1974. For the reasons discussed below, the order denying rehearing is reversed and the case is remanded for further consideration in accordance with this decision.

#### Background

Decedent, Gila River Allottee No. 4798, was born December 21, 1917, and died intestate at Phoenix, Arizona, on April 2, 1980. A probate hearing into decedent's Indian trust estate was held on June 22, 1982. At that hearing, it was determined that appellant, decedent's only child, was his sole heir under the Arizona laws of intestate succession. Accordingly, the order determining heirs found that decedent's entire trust estate should pass to appellant.

The order also allowed a claim in the amount of \$1,118 to the SSA for overpayments of SSI benefits to decedent during calendar year 1974. <sup>1/</sup> The overpayment allegedly resulted because of decedent's simultaneous receipt of both SSI benefits and benefits from the Veterans' Administration (VA). Appellant, who was not represented by counsel before the Administrative Law Judge, objected to this claim on the grounds that he did not believe that decedent had received the money.

The record suggests that decedent was paralyzed and had been determined to be incompetent. Apparently any benefits from either the SSA or the VA would have been paid into decedent's restricted Individual Indian Money (IIM) account at the Pima Indian Agency, Bureau of Indian Affairs (BIA), and would have been used to help defray the cost of his care at the American Indian Nursing Home in Laveen, Arizona.

The petition for rehearing, filed for appellant by present counsel, sought to present additional factual and legal arguments in order to show that the SSA claim should not have been allowed as a matter of law. The

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<sup>1/</sup> The award was reduced by the Administrative Law Judge from the original claim of \$1,138.

petition was denied on the grounds that the arguments appellant was seeking to raise could have and should have been raised at the initial hearing. The fact that appellant was not then represented by counsel was found not to justify special consideration in connection with the petition because "[a] party cannot fail to take reasonable and ordinary steps to advance his cause whether such steps mean getting help or informing the judge that help is needed" (Order at 3). The order concluded:

Although certain legal defenses might have existed to invalidate the Social Security Administration claim, if timely asserted, the petitioner is not now entitled to advance them. He has not shown any compelling or even logical reason for failing to act in a timely and responsive manner or to state that he needed help. In fact, his actions might easily be viewed as demonstrating cavalier disregard for the function and purpose of the proceeding.

Id.

Appellant's notice of appeal was received by the Board on April 7, 1983. Appellant filed a brief in support of his appeal. No opposing briefs were received.

#### Discussion and Conclusions

Rehearings in Indian probate cases are governed by 43 CFR 4.241, which states in pertinent part:

(a) Any person aggrieved by the decision of the administrative law judge may, within 60 days after the date on which notice of the decision is mailed to the interested parties, file with the Superintendent a written petition for rehearing. Such a petition must be under oath and must state specifically and concisely the grounds upon which it is based. If the petition is based upon newly-discovered evidence, it shall be accompanied by affidavits of witnesses stating fully what the new testimony is to be. It shall also state justifiable reasons for the failure to discover and present the evidence, tendered as new, at the hearings held prior to the issuance of the decision.

Appellant admits that the factual and legal arguments he wishes to raise could have been presented at the original hearing had he known their legal significance. He argues, however, that the Administrative Law Judge erred by not fully developing the factual record at the hearing. Appellant contends, and the record confirms, that the conduct of the hearing was entirely within the control of the Administrative Law Judge, who called all of the witnesses, asked all of the questions, and controlled the information made part of the record.

The record also reveals that the Administrative Law Judge suggested that appellant corroborate certain statements he made by contacting other

individuals who reportedly were better informed about the facts, and that she gave him an opportunity to respond to submissions made after the conclusion of the hearing by SSA in support of its claim. Appellant failed to provide any additional information.

The essential question raised by this appeal is what responsibility is borne by the Administrative Law Judge when an Indian heir who is not represented by counsel objects to a claim against the estate, but does not raise the precise and detailed factual and legal arguments that would be brought against the claim by skilled counsel.

[1, 2] The fact that an individual participating in a Departmental Indian probate proceeding is not represented by counsel does not entitle him to special rights not enjoyed by individuals who are so represented. Estate of Ralph James (Elmer) Hail, 12 IBIA 62, 65 n.2 (1983). Nor is an Administrative Law Judge generally required to anticipate or discover additional legal arguments or evidence that might be beneficial to an individual's case. Estate of Eugene Patrick Dupuis, 11 IBIA 11, 13 n.1 (1982). <sup>2/</sup>

[3] Nevertheless, when individuals are not represented, the Administrative Law Judge bears a greater burden of ensuring that all relevant facts are brought out at the hearing and that the proper legal standards are followed in the decision. Estate of Katie Crossguns, 10 IBIA 141, 144 (1982). In addition, the Board has stated that the Administrative Law Judges involved in the probate of Indian estates share the duty imposed upon the Department of the Interior to carry out the Federal trust responsibility to all Indians. <sup>3/</sup> Estate of Helen Ward Willey, 11 IBIA 43, 47 (1983). Therefore, the Administrative Law Judge has a duty to ensure that manifest errors are not committed, or if committed, are corrected. To accomplish that purpose, 43 CFR 4.242(d) permits an Administrative Law Judge to reopen an estate sua sponte within 3 years in order to prevent manifest error, <sup>4/</sup> and 43 CFR 4.320 provides that, on appeal, the Board may exercise the inherent authority of the Secretary of the Interior to correct a manifest injustice or error even when the issue addressed was not raised by the parties. <sup>5/</sup>

In this case, both the duties of the Administrative Law Judge to an unrepresented individual and the Department's trust responsibility ultimately required the Administrative Law Judge to ensure that the SSA claim against decedent's estate was legally allowable, making, if necessary, an independent examination of likely legal defenses to the claim. Although legitimate

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<sup>2/</sup> In Dupuis, however, the appellant was represented by her aunt as her guardian ad litem, and the evidence and arguments sought to be presented had been brought out at the hearing.

<sup>3/</sup> This responsibility is independent of, and in addition to, the responsibility of an Administrative Law Judge to ensure the full development of the evidence and legal arguments in a non-adversarial proceeding, which was cited in appellant's brief at page 5.

<sup>4/</sup> See Willey, *supra*, at 48 n.3.

<sup>5/</sup> See, e.g., Estate of Richard Doyle Two Bulls, 11 IBIA 77, 84 (1983).

claims against Indian trust estates are allowed by Departmental regulations, such claims must always be viewed skeptically because of the statutory provisions against the encumbrance of Indian trust property. See, e.g., 25 U.S.C. §§ 349, 354, 410 (1976); Estate of John Joseph Kipp, 8 IBIA 30 (1980).

In a June 9, 1982, memorandum to the file written by the Administrative law Judge's secretary and edited by the Administrative Law Judge, a telephone conversation with the SSA representative is recounted. The memorandum correctly observes that the SSA had "the absolute burden of proof" on its claim. The proof submitted by SSA, as recited in the order determining heirs, consisted of an affidavit in support of its claim, dated October 8, 1980; a Supplemental Security Income Notice of Overpayment, dated July 21, 1980; and an undated statement of the basis of the alleged overpayment, which was submitted after the conclusion of the hearing. The record also includes a computer printout allegedly showing simultaneous VA and SSI payments to decedent. The Administrative Law Judge's order determining heirs additionally makes several generalized statements concerning the basis for SSI benefit payments, citing to 20 CFR Part 416, 6/ in which the regulations concerning SSI benefits are set forth.

The petition for rehearing alleges that the claim should have been disallowed because (a) it was barred by SSA regulations governing administrative finality of overpayment determinations; (b) the VA benefits paid to decedent were paid into a restricted IIM account and were, therefore, not available to decedent and thus should not be considered income under the SSA Act and regulations until the funds were actually paid to decedent or expended for his benefit; (c) decedent's IIM account funds were used by BIA to defray the costs of medical care, so that the value of food and shelter provided to decedent should not be counted as in-kind income under SSA regulations; (d) even if the value of food and shelter were counted as income, it should be subject to the presumed maximum value rule established in SSA regulations; and (e) the claim was barred by the 6-year statute of limitations established by 28 U.S.C. § 2415 (1976).

[4] The Board finds two errors in this case. First, the evidence submitted by SSA in support of its claim is insufficient to carry its burden of proof. The evidence submitted by SSA consists entirely of conclusory assertions, based on a printout from an SSA computer, that it was entitled to a refund. 7/ No evidence was introduced to show that decedent or his IIM account actually received payments from both the SSA and the VA, or that the VA payments were used by or for decedent in a manner in which they were accountable as income to him under SSA regulations. The mere assertion, whether oral or written, by a Government agency that its records show that it has a claim against an Indian decedent's trust estate is insufficient to sustain the burden of proving entitlement to the claimed amount.

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6/ References in the order to 20 CFR 410.1110 and 46.1124 are in error. Both should refer to sections in Part 416.

7/ The computer printout was admitted into evidence as a normally prepared business record. The Board does not quarrel with the admission of the printout, but only with the conclusive weight apparently assigned to it.

[5] Second, there is no indication in the record or in the order determining heirs that the Administrative Law Judge considered any possible legal defenses to the SSA claim. The regulations in 20 CFR Part 416, cited as authorizing the claim, set forth several exceptions to the general definition of "income" which might apply in this case. <sup>8/</sup> The order determining heirs indicates that the Administrative Law Judge examined Part 416 in order to uphold the claim. The later order denying rehearing concedes that legal defenses to the claim may exist. Although the Administrative Law Judge was not required to establish the appellant's case, she was required to ensure, in this case as in every case, that all claims against the estate were legally allowable before approving them for payment.

Under the circumstances, the Board finds that the claim of the SSA against decedent's estate was never fully proved. The Administrative Law Judge's failure either to grant appellant's petition for rehearing or to reopen the estate sua sponte, potentially permits the perpetuation of a manifest injustice, which the Board cannot condone.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this case is remanded to the Hearings Division of this Office for full consideration of the claim against the estate filed by the Social Security Administration. <sup>9/</sup> The decision on remand shall be final unless its review is sought under the provisions of 43 CFR 4.241 and 4.320.

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Bernard V. Parrette  
Chief Administrative Judge

We concur:

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//original signed  
Franklin D. Arness  
Administrative Judge

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//original signed  
Jerry Muskrat  
Administrative Judge

<sup>8/</sup> The Board does not reach the question of whether appellant's arguments are meritorious.

<sup>9/</sup> This decision is not a determination by the Board that an individual participating in a Departmental Indian probate proceeding need not present all evidence or legal arguments at the initial probate hearing. It merely holds that under the circumstances presented here, the SSA claim must be reexamined.