



INTERIOR BOARD OF INDIAN APPEALS

WELSA Heirship Determination of Robert Lee Charbonneau

33 IBIA 168 (02/22/1999)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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WELSA HEIRSHIP DETERMINATION : Order Affirming Decision  
OF ROBERT LEE CHARBONNEAU :  
: Docket No. IBIA 99-32  
:  
: February 22, 1999

This is an appeal from a December 15, 1998, Final Order Determining Heirs issued by Administrative Judge Thomas K. Pfister in the heirship determination of Robert Lee Charbonneau (Decedent) under the White Earth Settlement Act (WELSA), 25 U.S.C. § 331 note. Appellants are James Charbonneau, Joyce LeCaine a.k.a. Joyce Charbonneau, Omer Charbonneau, Andrew Lawrence Charbonneau a.k.a. Joseph Charbonneau, Evelyn Charbonneau, Albert Charbonneau, and Robert Charbonneau. 1/ Appellants, who claim to be biological children of Decedent, were found by Judge Pfister not to be heirs of Decedent under WELSA. Appellants are all residents of Canada and are represented by counsel, Gregory Nakonechny, Esq., and Priscilla Kennedy, Esq., Edmonton, Alberta, Canada.

Albert Charbonneau, after filing his appeal with the Board, filed a petition for reconsideration with Judge Pfister. Because jurisdiction over Albert's appeal had vested in the Board by that time, Judge Pfister lacked jurisdiction over the matter, absent a remand by the Board. 2/ In accordance with an order issued by the Board on January 29, 1999, Judge Pfister transmitted Albert's petition for reconsideration to the Board, together with the remainder of the record in this matter.

Appellants filed a statement of reasons in accordance with 43 C.F.R. § 4.356(d). Their statement was received by the Board on February 11, 1999. Under 43 C.F.R. § 4.356(d), the Board must now determine whether Appellants have "set forth sufficient reasons for questioning the final order."

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1/ The Board presumes that this last appellant is Robert U. Charbonneau, who was determined not to be an heir of Decedent, rather than Robert Lee Charbonneau, who was determined to be an heir.

2/ While the WELSA regulations seem to allow for simultaneous proceedings on reconsideration and on appeal, such an interpretation of the regulations would clearly be disruptive of an orderly review process, as well as unduly burdensome on the parties. *Cf.*, e.g., Burlington Northern Railroad v. Acting Billings Area Director, 31 IBIA 180 (1997); Five Sandoval Indian Tribes, Inc. v. Deputy Commissioner of Indian Affairs, 21 IBIA 17, 18-19 (1991), explaining the reasons why the Board has consistently followed a rule requiring that only one forum at a time exercise jurisdiction over a particular matter.

Appellants do not argue that Judge Pfister erred in applying the requirements of WELSA to the facts of this case. They contend, however, that the definition of "heir" in WELSA, insofar as it incorporates Minn. Stat. § 525.172 (1984), violates the Fifth and Fourteenth Amendments to the Constitution of the United States and, in addition, violates the Constitution of Canada.

The Board has held on many occasions that it lacks authority to declare a Federal statute unconstitutional under the Constitution of the United States. *E.g.*, Estate of Annie Greencrow Whitehorse, 27 IBIA 136 (1995), and cases cited therein. <sup>3/</sup> The Board now holds that it also lacks authority to declare a Federal statute violative of the Constitution of Canada.

Appellants also urge the Board to apply Canadian law, rather than WELSA, as a matter of comity. Just as it lacks authority to declare WELSA unconstitutional, the Board is not free to abandon WELSA in favor of other law which Appellants consider to be more helpful to them. Congress directed that WELSA was to govern heirship determinations such as this one. The Board is bound to follow the direction of Congress.

The Board finds that Appellants have not set forth sufficient reasons for questioning the final order.

Albert's petition for reconsideration makes an argument applicable only to himself. He contends that, on the basis of new evidence he submits with his petition, he should be found to be an heir of Decedent.

As was stated in Shangreau, 68 F.3d at 208, 210, the definition of "heir" in WELSA incorporates Minn. Stat. § 525.172 (1984), which provided:

A child born to a mother who was not married to the child's father when the child was conceived nor when the child was born shall inherit from the mother the same as if the child was conceived or born to her when she was married, and also from the person who in writing and before a competent witness shall have declared himself to be the child's father, provided such writing or an authenticated copy thereof shall be produced in the proceeding in which it is asserted or from the person who has been determined to be the father of such child in a paternity proceeding before a court of competent jurisdiction; but such child shall not inherit from the kindred of the father by right of representation.

Judge Pfister found nothing in the record to show that Decedent had acknowledged in writing that he was Albert's father or that he had signed such an acknowledgment in the presence of a competent witness. He therefore concluded that Albert was not an heir of Decedent. Final Order at 8.

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<sup>3/</sup> The Board observes in passing that the WELSA provision challenged here was held to be constitutional in Shangreau v. Babbitt, 68 F.3d 208 (8th Cir. 1995), cert. denied, 116 S. Ct. 2547 (1996).

Albert now submits a copy of a statement which was evidently written on the back of his birth certificate and which appears to have been signed by Decedent. The statement reads: "Declaration by father[.] I Leo Charbonneau, of Plamondon declare that I am the father of the child Albert Ladouceur mentioned on the other side, and I wish this child to be legally registered. Given under my hand at Plamondon Alberta, this 1st day of April 1944." The statement bears a stamp indicating that it was received at the Alberta Bureau of Vital Statistics on April 20, 1944.

43 C.F.R. § 4.354(a) provides:

[A] petition [for reconsideration] must be under oath and must state specifically and concisely the grounds upon which it is based. If it is based upon newly discovered evidence, it shall be accompanied by affidavits of witnesses stating fully what the new evidence or testimony is to be. It shall also state justifiable reasons for the prior failure to discover and present the evidence.

Albert's petition for reconsideration is not under oath and is not accompanied by affidavits of witnesses. More importantly, it gives no reason at all for the failure to discover and present Decedent's alleged statement during the lengthy proceedings before Judge Pfister and his predecessor, Judge Meuwissen. 4/

Accordingly, this petition must be denied on procedural grounds.

Moreover, even if the petition were not denied on procedural grounds, it would have to be denied on substantive grounds. While it seems likely that the statement Albert submits as new evidence was in fact signed by Decedent, there is absolutely no evidence that it was witnessed by a competent witness as required by Minn. Stat. § 525.172 (1984). Accordingly, the new evidence submitted by Albert does not bring him within the definition of "heir" in WELSA.

John A. Charbonneau filed an answer to Albert's petition for reconsideration. In his answer, John also objects to Judge Pfister's finding that Sandi Lee Charbonneau, a.k.a. Dorothy Charbonneau, is an heir of Decedent. Insofar as John's answer is a challenge to Judge Pfister's Final Order, it is untimely and cannot be considered.

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4/ In a Dec. 30, 1998, letter to Judge Pfister, Albert sought a two-month extension of time in which to file a petition for reconsideration, stating that he had heard about, but had not received, Judge Pfister's Dec. 15, 1998, Final Order and that he needed more time to locate documents supporting his claim. He also stated that he had not produced documentation earlier because he had believed his status as a child of Decedent was not doubted.

Even if Albert's Dec. 30, 1998, letter can be construed as a part of his petition for reconsideration, the Board finds that the letter does not state a "justifiable reason[]" for the prior failure to discover and present the evidence." Albert's paternity was clearly at issue throughout these proceedings, and he was put on notice at an early stage that he would be required to establish that Decedent was his father. See Judge Meuwissen's July 29, 1997, order titled "Briefing of Issues for Parties and Counsel" at 1.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Judge Pfister's December 15, 1998, Final Order is affirmed. In accordance with 43 C.F.R. § 4.356(e), this decision is final for the Department of the Interior.

//original signed

Anita Vogt  
Administrative Judge

//original signed

Kathryn A. Lynn  
Chief Administrative Judge