



INTERIOR BOARD OF INDIAN APPEALS

Elsie B. Dick v. Northwest Regional Director, Bureau of Indian Affairs

37 IBIA 279 (06/11/2002)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

ELSIE B. DICK,
Appellant
v.
NORTHWEST REGIONAL DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Affirming Decision
:
:
:
: Docket No. IBIA 01-125-A
:
:
: June 11, 2002

The Board of Indian Appeals (Board) received two notices of appeal from Elsie B. Dick. Both appeals sought review of an April 19, 2001, decision issued by the Northwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA), placing a hold on Appellant's Individual Indian Money (IIM) account and finding that funds from that account should be disbursed to the Yakama Nation Credit Enterprise (YNCE). For the reasons discussed below, the Board affirms that decision.

One notice of appeal was filed with the Regional Director by Appellant. The Regional Director forwarded this notice of appeal to the Board. In this notice of appeal, Appellant states:

My appeal to you was NOT solely based upon the finding of [the hearing officer]. I appealed because the BIA DID NOT carry out the wishes of my husband [Moses Dick, Sr.] and the will he filed with the BIA before his death. My argument is that if your agency had done its job then I would not be behind in paying any debt because the estate would have paid all of the bills. You are the people who had control of my husband's estate and not me. My argument is that your agency is to blame for my present circumstances and the conflicts that have gone on since the death of my husband.

The second notice of appeal was filed with the Board by counsel for Appellant. That notice of appeal states in its entirety:

Please accept this as a Notice of Appeal of the decision rendered by the Northwest Regional Director dated April 19, 2001 and received by our office on April 24, 2001. A copy of the decision is attached. A Certificate of Service is also attached.

In the Board's July 5, 2001, notice of docketing, Appellant was advised that she bore the burden of proving the error in the Regional Director's decision. Her opening brief was due on or before August 13, 2001. No brief has been filed.

Neither of Appellant's notices of appeal even alleges any error in the Regional Director's decision. Appellant's first notice of appeal indicates that she is concerned with the way in which her husband's 1/ estate was probated. It does not, however, attempt to show any way in which the Regional Director's decision is wrong. Her second notice of appeal contains no indication whatsoever of Appellant's concerns.

The Board has frequently held that an appellant who fails to make any allegation of error in the decision under appeal, let alone any argument in support of such an allegation, has not carried her burden of proof. See, e.g., Cervantes v. Acting Southern Plains Regional Director, 37 IBIA 224 (2002); OK Tank Trucks, Inc. v. Acting Muskogee Area Director, 33 IBIA 119 (1999), and cases cited therein. Appellant has not carried her burden of proof here.

Although the finding that Appellant has not carried her burden of proof is sufficient to dispose of this case, the Board offers the following comments as dicta.

On May 25, 1976, and May 12, 1977, Appellant and Moses Dick, Sr. (Decedent), applied for two loans from YNCE. The loan applications, which pledged IIM account funds as collateral, were approved by BIA. Funds were committed to the loans by YNCE. Appellant does not deny receiving the loan proceeds.

Because the loan applications were signed by both Appellant and Decedent, both individuals were responsible for repayment.

Appellant appears to contend that the loans should have been repaid through the probate of Decedent's estate. An order approving Decedent's will was entered on September 11, 1993, by Administrative Law Judge William E. Hammett. The scant materials in the present administrative record that relate to the probate of Decedent's estate do not show whether YNCE filed a claim in Decedent's estate. However, Judge Hammett did not discuss or approve any such claim in his September 11, 1993, order. It would be extremely unusual for the Judge not to discuss all claims properly filed in an estate. However, whether or not YNCE filed a proper claim in Decedent's estate, no payment was approved, and the Bureau of Indian Affairs lacks authority to disburse funds from an estate contrary to the administrative law judge's order.

Appellant may have preferred to have these loans paid from Decedent's estate. However, because Appellant and Decedent were both liable for repayment of the loans, YNCE had several

1/ The Board refers to Moses Dick, Sr., as Appellant's husband, although the materials before the Board show that this relationship was contested during the probate of Moses' estate.

options for seeking repayment, including filing a claim against Decedent's estate, seeking repayment from Appellant, or both.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Regional Director's April 19, 2001, decision is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge