



INTERIOR BOARD OF INDIAN APPEALS

Estate of John Joseph Kipp

8 IBIA 67 (04/11/1980)

Denying reconsideration of:
8 IBIA 30



United States Department of the Interior

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

ESTATE OF JOHN JOSEPH KIPP : IBIA 79-32 (Supp.)
:
: Order Denying Petition for
: Reconsideration
:
: April 11, 1980

ORDER

On March 27, 1980, Mildred Kipp, through counsel, filed with the Board of Indian Appeals a "petition for rehearing" of its decision dated March 14, 1980, wherein her claim against decedent's trust estate was disallowed on jurisdictional grounds. See 8 IBIA 30, 35, 40-41 (1980). Departmental rules provide for "reconsideration" of Board decisions, 43 CFR 4.21(c), but not "rehearing" of such matters. The foregoing petition for rehearing is therefore treated as a "petition for reconsideration" in accordance with established Departmental procedures.

Petitioner alleges she was denied due process of law since "she had no notice of the consideration of the issue of her claim, and was given no opportunity to be heard thereon."

Petitioner was given specific notice that the Estate of John Joseph Kipp was under review by the Board of Indian Appeals and was referred to the regulations governing such proceedings. By virtue of 43 CFR 4.290, petitioner knew or should have known that the Board was not limited in its scope of review of the Administrative Law Judge's decision appealed from, but that the Board was empowered to correct any manifest error or injustice committed in the probate of this estate where appropriate. Further, petitioner had been previously advised by the Administrative Law Judge in open hearing that her claim against decedent's estate was untimely filed and that it could not be considered. ^{1/} (Notwithstanding, the Administrative Law Judge subsequently allowed the claim in his order determining heirs.)

^{1/} In view of this circumstance, it is not surprising that decedent's heirs did not object to petitioner's claim as noted by petitioner.

The fact that the Administrative Law Judge erroneously assumed jurisdiction over petitioner's claim does not mean the Board may do so. By regulation, a claim not timely filed "shall be forever barred." 43 CFR 4.250. Neither the Administrative Law Judge nor the Board has the authority to disregard Departmental regulations.

In view of the foregoing, petitioner's request for reconsideration of the Board's decision of March 14, 1980, is denied.

//original signed
Wm. Philip Horton
Chief Administrative Judge

I concur:

//original signed
Mitchell J. Sabagh
Administrative Judge

fn. 1 (continued)

However, even if the heirs were led to believe that the claim would be considered, their failure to object presents no legal basis for allowance of a claim prohibited by regulations. If in fact the heirs at law are disposed to compensate petitioner, there are means of doing so outside this proceeding.