INTERIOR BOARD OF INDIAN APPEALS

Estate of Thomas Tointigh

17 IBIA 17 (11/09/1988)

United States Department of the Interior

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

ESTATE OF THOMAS TOINTIGH

IBIA 88-22 Decided November 9, 1988

Appeal from an order denying objection to claim issued by Administrative Law Judge Sam E. Taylor in Indian Probate IP OK 29 P 87.

Vacated and remanded.

1. Indian Probate: Rehearing: Pleading, Timely Filing

   An untimely petition for rehearing must be denied by the Administrative Law Judge.

2. Indian Probate: Administrative Law Judge: Authority--Indian Probate: Reopening: Generally

   To prevent manifest error, an Administrative Law Judge may reopen an estate closed for less than 3 years on his/her own motion. 43 CFR 4.242(d).

2. Indian Probate: Administrative Law Judge: Generally--Indian Probate: Representation

   When an individual participating in an Indian probate proceeding is not represented by counsel, the Administrative Law Judge bears a greater burden of ensuring that all relevant facts are brought out at the hearing.

3. Indian Probate: Administrative Law Judge: Generally--Indian Probate: Claim Against Estate: Allowable Item

   The Administrative Law Judge conducting an Indian probate proceeding is required to ensure that all claims against the decedent's estate are legally allowable before approving them for payment.

APPEARANCES: George Tah-Bone, Jr., Esq., Anadarko, Oklahoma, for appellant.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Birdie Tointigh seeks review of a January 22, 1988, order denying objection to claim issued by Administrative Law Judge Sam E. Taylor in the estate of Thomas Tointigh (decedent). For the reasons discussed below, the Board vacates that order and remands this case to Judge Taylor for further proceedings.

Background

Decedent, an unallotted Kiowa Indian, was born on June 20, 1929, and died intestate on February 5, 1986, at Lawton, Oklahoma. A hearing to probate his trust estate was held on March 11, 1987, by Administrative Law Judge Sam E. Taylor. Appellant, the widow of decedent, was present at the hearing but was not represented by counsel. On the day of the hearing, the Anadarko Municipal Hospital presented a claim for $22,983.40 for decedent's hospitalization from June 30 to August 8, 1983. On March 24, 1987, Judge Taylor issued an order determining heirs in which he approved the claim in the amount of $2,761, the estimated value of the estate.

Appellant did not file a petition for rehearing. However, on November 25, 1987, she wrote to the Anadarko Agency, Bureau of Indian Affairs (agency), objecting to payment of the claim, and on December 8, 1987, her attorney also wrote to the agency with the same objection. The two letters were referred to Judge Taylor, who, by order of January 22, 1988, denied the objection on the grounds that it was not filed within the 60-day period allowed for filing petitions for rehearing. 43 CFR 4.241.

Appellant filed a notice of appeal with the Board. Because it appeared that Judge Taylor had properly denied appellant's objection as untimely, the Board ordered appellant to show cause why the Judge's order should not be summarily affirmed. Appellant's response to the order stated, inter alia, (1) that she was not fully informed of the hospital's claim during the probate hearing and that, had she understood it, she would have objected strongly, because she considered the hospital responsible for decedent's death; (2) decedent suffered brain injury during surgery performed at the hospital in 1983 and remained in a coma for the rest of his life; (3) appellant and decedent filed suit against the hospital in August 1984, and the case was settled in April 1986; (4) appellant's objection to the claim against decedent's estate was filed after she was informed that the agency had an account in decedent's name, consisting of payments from the Indian Arts and Crafts Board, to which the hospital claimed entitlement. Appellant contended that she was not informed of the requirements, including the time limitation, for filing a petition for rehearing; that her objection should have been treated as a petition for reopening; and that Judge Taylor did not do all he should have in helping her pursue her objection to the claim.

Upon review of appellant's response, the Board determined that her appeal should not be summarily disposed of. The appeal was docketed on June 1, 1988, and a briefing schedule was set. No briefs were filed.

Discussion and Conclusions

[1, 2] The Board has held that an untimely petition for rehearing must be denied by the Administrative Law Judge. E.g., Estate of Roger Moque Tosee, 7 IBIA 7 (1978); Estate of Simpson Nokusille, 5 IBIA 178 (1976); Estate of Andrew Jackson Marsh, 4 IBIA 106 (1975). Although appellant states that she was not informed of the 60-day deadline for filing petitions for rehearing, that requirement was set out in Judge Taylor's order determining heirs, a copy of which was mailed to appellant. Appellant should have filed her objection within the 60-day period. Under most circumstances, she would have relinquished any right to further review by failing to file a timely petition for rehearing. In the circumstances of this case, however, the Board finds that Judge Taylor should have reopened the probate on his own motion pursuant to 43 CFR 4.242(d) in order to hear appellant's objection to the hospital's claim. 1/

[3, 4] Appellant was not represented by an attorney at the probate hearing. The hearing transcript indicates that Judge Taylor inadvertently failed to offer her an opportunity to object to the claim. When an individual participating in a Departmental probate proceeding is not represented by counsel, "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 Wesley Emmet Anton, 12 IBIA 139, 142 (1984). See also, e.g., Estate of Katie Crossguns, 10 IBIA 141, 144 (1982); Estate of Simpson Nokusille, 5 IBIA at 180. In Anton, addressing the Judge's responsibility with regard to a claim submitted by the Social Security Administration (SSA), the Board stated: "[B]oth 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." 12 IBIA at 142.

The Board may exercise the inherent authority of the Secretary of the Interior to correct a manifest injustice or error. 43 CFR 4.320. In this case, because of the failure to fully develop the facts and possible legal defenses to the hospital's claim, the Board exercises that authority and remands the case. On remand, Judge Taylor should ensure that full consideration is given to the claim and appellant's objections thereto, including the legal effect of the settlement of appellant's litigation against the hospital.

1/ 43 CFR 4.242(d) provides in relevant part:

"To prevent manifest error an administrative law judge may reopen a case within a period of 3 years from the date of the final decision, after due notice on his own motion, or on petition of an officer of the Bureau of Indian Affairs."

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the January 22, 1988, order issued by Administrative Law Judge Sam E. Taylor is vacated, and this matter is remanded for further proceedings consistent with this opinion.

//original signed
Anita Vogt
Administrative Judge

I concur:

//original signed
Kathryn A. Lynn
Chief Administrative Judge