



INTERIOR BOARD OF INDIAN APPEALS

Estate of Jacob S. Tsofigh, Sr.

35 IBIA 87 (06/15/2000)



United States Department of the Interior

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

ESTATE OF JACOB S. TSOTIGH, SR. : Order Affirming Decision
:
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: Docket No. IBIA 00-32
:
:
: June 15, 2000

This is an appeal from a November 4, 1999, Order Denying Petition for Rehearing issued in the estate of Jacob S. Tsotigh, Sr. (Decedent) by Administrative Law Judge Richard L. Reeh. The appeal was filed by Bessie Tsotigh Ramirez (Appellant).

Appellant argued in her notice of appeal that Judge Reeh "did not give [her] the right advice as to how [she] should appeal." 1/ She made no arguments concerning the substance of Judge's Reeh's November 4, 1999, order, although she enclosed documents which she stated she had filed with him. She requested an extension of time to present her arguments, stating that she had found an attorney to assist her with her appeal but that he needed more time to prepare.

Appellant was advised in the Pre-Docketing Notice for this appeal that her request for extension of time was premature at that point but that she could renew her request, if necessary, once a briefing schedule had been established.

A briefing schedule was established in the Notice of Docketing issued on February 29, 2000. Under that schedule, Appellant's opening brief was due April 5, 2000. Appellant did not file a brief and did not request an extension of time for filing a brief. Thus, the only argument she has made is the one in her notice of appeal.

Judge Reeh issued an Order Approving Will and Decree of Distribution in Decedent's estate on October 6, 1998. That order shows that it was mailed to the parties on October 6, 1998, accompanied by a document titled "Notice to All Persons Having an Interest in the Subject Matter of This Proceeding." The notice stated in part:

1/ It appears likely that Appellant meant to argue that Judge Reeh provided incorrect advice concerning the filing of petitions for rehearing, rather than the filing of appeals.

The decision becomes final sixty (60) days from the date of the mailing of this Notice unless, within such period, a written Petition for Rehearing shall have been filed with the Superintendent by an aggrieved party in accordance with provisions of 43 C.F.R. 4.241.

Any Petition for Rehearing must be under oath and must give a concise but complete statement of the grounds on which it is based. If it is based upon newly discovered evidence, it shall be accompanied by affidavit(s) of witness(es) stating fully what the new testimony is to be. The Petition shall include the Petitioner's justifiable reasons for failing to discover and present that evidence, tendered as new, at the hearing(s) conducted prior to issuance of the decision.

Judge Reeh's November 4, 1999, Order Denying Petition for Rehearing included instructions for filing a notice of appeal to the Board under 43 C.F.R. § 4.320.

The Board finds that Judge Reeh provided Appellant with correct instructions for seeking rehearing and for appealing to the Board.

Appellant has made no other arguments although she has been fully advised of her right to do so. The Board finds that she has failed to carry her burden of proving error in the decision on appeal. See, e.g., Estate of Richard G. Kihega, Sr., 28 IBIA 195 (1995) (An appellant who fails to make any allegation concerning how the Administrative Law Judge's decision is in error, let alone any argument in support of such an allegation, has not carried her burden of proof). Even if Appellant intended the documents she submitted with her notice of appeal to be a resubmission of arguments she made before Judge Reeh, she has failed to show how he erred in addressing those arguments. Cf. Concho Cattle Co. v. Acting Anadarko Area Director, 31 IBIA 97 (1997) (An appellant who merely resubmits filings made below, with no allegation of error in the decision on appeal, has not carried her burden of proof).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Judge Reeh's November 4, 1999, order is affirmed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge