



## INTERIOR BOARD OF INDIAN APPEALS

Estate of Owen Snez

45 IBIA 28 (05/11/2007)

Related Board case:

40 IBIA 96



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ESTATE OF OWEN SNEZ ) Order Affirming Denial of Rehearing  
)  
)  
) Docket No. IBIA 05-71  
)  
) May 11, 2007

Appellant Shirley Snez, who is represented in this appeal by her daughter, Loretta Snez Burnette, appeals from an Order Upon Rehearing entered on March 22, 2005, by Administrative Law Judge Patricia McDonald Dan (ALJ) in the Estate of Owen Snez (Decedent), deceased unallotted Navajo Indian (Probate No. NV-780-0149). In the Order Upon Rehearing, the ALJ denied a claim asserted by Appellant for \$14,700 in unpaid alimony that Decedent allegedly owed Appellant, his ex-wife. The ALJ concluded that the claim was timely filed in accordance with 43 C.F.R. § 4.250(a) (2002), but denied the claim because it did not satisfy the requirements of 43 C.F.R. § 4.250(c)<sup>1</sup> and had not been reduced to judgment. We affirm the ALJ’s decision but on other grounds: Denial of rehearing was proper because Appellant’s claim was untimely.

### Background

Decedent died intestate on January 5, 2002, at Ft. Defiance, Arizona. Two weeks later, Appellant learned of Decedent’s death from Burnette. Opening Brief at 2; Burnette

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<sup>1</sup> Subsection 4.250(c) of 43 C.F.R. provides

All claims must be filed in triplicate, itemized in detail as to dates and amounts of charges for purchases or services and dates and amounts of payments on account. Such claims must show the names and addresses of all parties in addition to the decedent from whom payment might be sought. Each claim must be supplemented by an affidavit, in triplicate, of the claimant or someone in his or her behalf that the amount claimed is justly due from the decedent, that no payments have been made on the account which are not credited thereon as shown by the itemized statement, and that there are no offsets to the knowledge of the claimant.

Affidavit, ¶ 3. At the time of his death, Decedent owned interests in trust or restricted property on the Navajo Reservation in Arizona and New Mexico.

On March 4, 2002, Burnette reported Decedent's death to BIA. On March 19, 2002, BIA received the death certificate for Decedent. Thereafter, BIA prepared the probate package for the Attorney Decision Maker (ADM).

On May 5, 2003, ADM Allan R. Toledo held an informal hearing to determine Decedent's heirs and to settle his estate. On June 5, 2003, the ADM issued an Order to Determine Heirs and Order to Distribute, in which he determined that Decedent's heirs were his widow and his four daughters. The ADM ordered the distribution of Decedent's estate in accordance with the laws on intestate succession of Arizona and New Mexico. The ADM's order noted that no claims had been submitted against Decedent's estate.

On July 10, 2003, Decedent's four daughters filed a "Motion to Appeal" from the ADM's decision, which included an undated letter from Appellant. Relevant to this appeal, the daughters asserted that the ADM's decision did not provide for "the payment of an outstanding claim of Shirley Snez, Decedent's former wife." Motion to Appeal at 4. They claimed that Decedent had been ordered to pay alimony by the Tribal Court, and that only partial payments were made, thus leaving a "delinquent alimony accrual of \$14,700.00 as of May 2003." *Id.* They argued that Appellant's health had prevented her from participating in Decedent's probate proceedings but that she is now "asserting her claim." *Id.* Appellant's letter provided additional details concerning her claim for alimony arrears. Decedent's daughters requested that the ADM's order be amended to provide for the payment of Appellant's claim. Decedent's daughters' appeal and Appellant's letter were forwarded to the ALJ.

On December 18, 2003, the ALJ held a hearing to consider the appeal from the ADM's decision. On June 25, 2004, the ALJ issued a "Decision on Appeal." The ALJ denied Appellant's claim because it was not timely filed in accordance with 43 C.F.R. § 4.250(a) (2002). The ALJ also determined that, even if the claim were not time barred, it would be denied because it was not filed in triplicate, or supplemented by an affidavit stating that no payments have been made or itemizing payments that had been made, and addressing the issue of offsets against the claim, as is required by 43 C.F.R. § 4.250(c). Finally and in reliance on the Navajo Supreme Court's decision in *Naize v. Naize*, Case

No. SC-CV-16-96 (Navajo Sup. Ct. 1997),<sup>2</sup> the ALJ noted that it was “doubtful that the indefinite award of alimony would form the basis of a valid claim, and whether it would survive the death of the payor spouse.” Decision on Appeal at 4. The ALJ affirmed the Order to Determine Heirs and Order to Distribute.<sup>3</sup> The ALJ advised interested parties that the decision would be final for the Department of the Interior unless an appeal was filed with the Board of Indian Appeals (Board) within 60 days in accordance with 43 C.F.R. § 4.320.

On behalf of her mother, Burnette appealed the ALJ’s June 25 decision to the Board. She argued that Decedent had a “continue[d] obligation to pay alimony to Shirley Snez . . . [and] that [Shirley Snez] has a valid claim against the estate.” Notice of Appeal at 1. On September 8, 2004, the Board dismissed the appeal as premature, and referred the matter to the ALJ for consideration as a timely petition for rehearing. *Estate of Owen Snez*, 40 IBIA 96, 98 (2004). The Board noted that the appeal instructions in the ALJ’s Decision on Appeal were incorrect, and concluded that, even in cases where an ALJ issues a decision following an appeal from an ADM decision, an aggrieved party must first seek rehearing before the ALJ before appealing to the Board. *Id.* at 97.

Upon receiving the referral, the ALJ afforded the interested parties an opportunity for briefing. Appellant submitted a brief to the ALJ. Appellant did not dispute the ALJ’s finding that her claim was untimely under 43 C.F.R. § 4.250(a). Instead, she requested the ALJ to “reopen” Decedent’s estate to allow Appellant to submit a claim. Appellant’s Brief to ALJ on Rehearing at 4. As grounds to permit reopening, Appellant asserted that she was not properly notified of the original probate proceedings and that she was “denied her right to submit a timely claim against the estate.” *Id.* Appellant also argued that the ALJ had incorrectly interpreted Navajo law and that, citing *Yazzie v. Yazzie*, Case No. A-CV-16-91 (Navajo Sup. Ct. 1992), Navajo courts “are likely to allow [Appellant] to file a claim against the estate and obtain[] an award satisfying the unpaid alimony from decedent’s estate.” *Id.* at 8.

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<sup>2</sup> In *Naize*, the Navajo Supreme Court reversed a Navajo family court judgment obligating the appellant to deliver wood and coal to his former wife for an indefinite period of time because it “violates that Navajo common law rule which requires finality in Navajo divorces. Harmony in the community and in the lives of the divorced spouses should be restored quickly following a divorce.” *Naize*, ¶ 32.

<sup>3</sup> In addition to denying Appellant’s claim, the ALJ rejected the other arguments raised by Decedent’s daughters’ Motion to Appeal.

On March 22, 2005, the ALJ denied rehearing. The ALJ first rejected Appellant's request that the probate be "reopened," noting that the Board had specifically referred Appellant's appeal to the ALJ to be treated as a timely petition for rehearing. However, the ALJ reversed her earlier determination that Appellant's claim was untimely. The ALJ stated,

[S]ection 4.250(a)(ii) requires the claimant to file within 20 days from the date the creditor is chargeable with notice of the decedent's death. The Notice of Hearing before this forum issued [to Appellant] on November 25, 2003 and a hearing was held on December 18, 2003. [Appellant] filed her claim with the [ADM] on July 10, 2003 along with [Burnette's] appeal from the [ADM's decision]. The claim is, therefore, considered timely pursuant to 43 C.F.R. § 4.250(a)(ii).

*Id.* at 8. The ALJ determined however, that the claim still must be rejected because it did not meet the requirements of 43 C.F.R. § 4.250(c) and 25 C.F.R. § 15.303(a)-(b) (2001)<sup>4</sup> that it be filed in triplicate and accompanied by an affidavit. The ALJ also rejected the claim because it had not been reduced to a judgment by the Navajo Courts for enforcement, despite "ample opportunity to do so." *Id.* The ALJ therefore denied rehearing.

Appellant appealed to the Board, and filed an opening brief. No other briefs were filed.

### Discussion

We conclude that the ALJ properly treated Appellant's petition as a petition for rehearing under 43 C.F.R. § 4.241 and we affirm the ALJ's decision to deny rehearing. However, we affirm the decision to deny rehearing on different grounds because we conclude that the ALJ erred in her determination that Appellant's claim was timely submitted. We conclude that the claim is untimely and that this error is fatal to Appellant's petition for rehearing.<sup>5</sup>

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<sup>4</sup> Section 15.303 is now codified at 25 C.F.R. § 15.202 (2006).

<sup>5</sup> Because we determine that the untimeliness of Appellant's claim is dispositive of her petition for rehearing, we need not reach the merits of the ALJ's grounds for denying rehearing, *i.e.*, that Appellant's claim failed to comply with the requirements of 43 C.F.R. § 4.250(c) and 25 C.F.R. § 15.303(a)-(b).

Appellant contends that the ALJ erred in declining to construe Appellant's petition as one to reopen Decedent's estate under 43 C.F.R. § 4.242, rather than as a petition for rehearing under section 4.241. Appellant apparently believes that if Decedent's estate is reopened, the claims deadline in 43 C.F.R. § 4.250(a) will not apply. The Board recently rejected the argument that no deadline applies when a claim is submitted in a petition for reopening. *Estate of Bertha Mae Tabbytite*, 45 IBIA 10, 22 (2007). Thus, even if we agreed with Appellant that her petition should have been treated as one for reopening the estate, her claim still would have been untimely.<sup>6</sup>

In *Estate of Tabbytite*, we held that the regulation governing the reopening of estates, 43 C.F.R. § 4.242, does not displace or supplant the requirements governing the submission of creditor claims against the estate of an Indian decedent. 45 IBIA at 22. In other words, section 4.242 does not provide claimants with a second bite at the probate apple — a creditor must still comply with the requirements for the submission of creditor claims, including the timely submission of such claims. *See* 43 C.F.R. § 4.250; *see also* 25 C.F.R. § 15.303 (2001); *Estate of Tabbytite*, 45 IBIA at 22. Therefore, we reject Appellant's suggestion that reopening Decedent's estate might afford her a second opportunity to submit her claim against the estate. We also reject Appellant's argument that the ALJ erred in applying section 4.250 to her claim.

However, we disagree with the ALJ's analysis of section 4.250(a) and conclude that the ALJ erred in her determination that Appellant's claim was timely. On December 31, 2001, 43 C.F.R. § 4.250(a) was amended to require that all claims against the estate of a deceased Indian be filed with BIA

(i) [w]ithin 60 days from the date BIA receives a certified copy of the death certificate or other verification of the decedent's death under 25 C.F.R.

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<sup>6</sup> Petitions for rehearing and petitions for reopening are both avenues by which review of probate decisions may be obtained. A petition for rehearing may be submitted within 60 days of the date of the decision. 43 C.F.R. § 4.241(a). During the 60-day period for filing petitions for rehearing, the initial probate decision does not become a final decision. 43 C.F.R. §§ 4.240(b), 4.241. If a timely petition for rehearing is submitted, the estate remains open while the petition is under review. Once a probate decision becomes final, the estate is deemed to be closed, and thereafter, the only avenue of review is through reopening. In the present case, because of Appellant's original appeal to the Board and the Board's remand, the estate was still open when the ALJ considered Appellant's petition, and therefore it was properly considered as a petition for rehearing.

[§] 15.101 or (ii) [w]ithin 20 days from the date the creditor is chargeable with notice of the decedent's death, whichever of these dates is later.

43 C.F.R. § 4.250(a) (2002). The ALJ treated the November 25, 2003, notice for the probate hearing as triggering the date on which Appellant was "chargeable with notice of the decedent's death." Because Appellant already had filed her claim in July 2003, the ALJ concluded that "[t]he claim is . . . considered timely pursuant to 43 C.F.R. § 4.250(a)(ii)." Order Upon Rehearing at 8. We disagree with this reading of subsection 4.250(a)(ii). Subsection 4.250(a)(ii) is triggered when a creditor is chargeable with notice of a decedent's *death*, not notice of the probate proceedings. Actual or constructive notice of a decedent's death makes a creditor "chargeable with notice of the decedent's death." In some cases, notice may not occur until a creditor receives notice of a probate hearing from BIA or the ALJ, but may also occur earlier through other means.

Indeed, notwithstanding the ALJ's conclusion to the contrary, on appeal Appellant concedes that she "missed the deadline for filing a claim under 43 C.F.R. § 4.250(a)(ii)." Opening Brief at 4. It is undisputed that Appellant received actual notice of Decedent's death on or about January 19, 2002, and that BIA received the death certificate for Decedent on March 19, 2002. Thus, under section 4.250(a), the latest date by which Appellant might submit a timely claim was May 18, 2002, which is 60 days after March 19, 2002. 43 C.F.R. § 4.250(a)(i). Appellant's claim was not filed until July 10, 2003, and was thus untimely.

Because Appellant did not file her claim until July 2003, it is time-barred under subsection 4.250(a) and Appellant's petition should have been denied on that basis. We therefore affirm the ALJ's denial of rehearing, but on other grounds.

### Conclusion

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board affirms the ALJ's denial of rehearing on other grounds.

I concur:

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// original signed  
Debora G. Luther  
Administrative Judge

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge