



INTERIOR BOARD OF INDIAN APPEALS

Estate of Reginald Paul Walkingsky

52 IBIA 233 (11/09/2010)

Reconsideration denied:

52 IBIA 270

We dismiss Walkingsky's appeal because she failed to comply with an order to serve interested parties and failed to first present her issues to the ALJ in a petition for rehearing. With respect to Primeaux's appeal, we summarily affirm the Rehearing Order because Primeaux fails to establish any error in the Rehearing Order.

Discussion

The Board consolidated the appeals, but before ordering the probate record, ordered Appellants to address several threshold matters. First, neither Appellant had certified completion of service of their respective appeal on interested parties, as required by 43 C.F.R. §§ 4.310(b) and 4.323. The Board ordered each Appellant to serve interested parties and to certify to the Board that they had complied with the order. Second, with respect to Primeaux's appeal, it appeared that the Rehearing Order correctly had concluded that Primeaux — as Decedent's uncle — was not Decedent's heir under AIPRA, *see supra* note 1, and that while Howard disagreed with the outcome from the Rehearing Order, it was not clear that he was alleging that the Rehearing Order contained any factual or legal error. Third, with respect to Walkingsky's appeal, it appeared that she had not first presented her issues and arguments to the ALJ in a petition for rehearing, and therefore her appeal was not within the scope of the Board's review. *See* 43 C.F.R. § 4.318 (Scope of review).

To address these issues, the Board ordered Appellants, on or before September 1, 2010, to comply with the service requirements and, on or before September 10, 2010, to show cause why the Board should not summarily affirm the ALJ's Rehearing Order. The Board advised Appellants that if they failed to respond to the Board's order, their respective appeals might be dismissed without further notice.

Walkingsky did not respond to the Board's order, and therefore we dismiss her appeal for failure to prosecute and for failure to show that the issues raised by her appeal are within the scope of the Board's review.

Primeaux complied with the Board's order to serve interested parties, but did not submit a response to the Board's order to show cause (OSC), except to re-file his notice of appeal, adding a statement signed by Homer disputing that Primeaux and Walkingsky are or were ever married. As noted earlier, in his notice of appeal Primeaux contends that as Decedent's uncle and closest surviving relative, and as a co-owner, he should be considered an "eligible heir," as that term is used in AIPRA. Primeaux also contends that he will experience economic hardship if Decedent's property is distributed to the Tribe.

Appellant Primeaux bears the burden of showing that the Rehearing Order was in error. *See Estate of Verna Mae Pepion Hill Hamilton*, 45 IBIA 58, 63 (2007) (citing *Estate of Samuel R. Boyd*, 43 IBIA 11, 15 (2006)). The Board gave Primeaux the opportunity to identify and explain any grounds on which he contended that the ALJ erred. In the OSC, the Board explained why being a co-owner of property does not, by itself, make a person an “eligible heir” under AIPRA.

Although Primeaux did not respond to the Board’s explanation of why being a co-owner does not, by itself, make one an heir under AIPRA, we reiterate here why that is the case and why Primeaux is not an eligible heir under AIPRA. Under the definition of “eligible heir” in AIPRA, “any of a decedent’s children, grandchildren, great grandchildren, full siblings, half siblings by blood, and parents” who *also* satisfy one of three qualifying criteria — one of which is to be a co-owner of trust or restricted land in the decedent’s estate — are eligible to inherit under AIPRA. *See* 25 U.S.C. § 2201(9) (definition of “eligible heir”); 43 C.F.R. § 30.101 (same). But satisfying one of the qualifying criteria (e.g., by being a co-owner) does not make one an “eligible heir” if one is not a child, grandchild, great grandchild, sibling, or parent of the decedent. And the substantive rules of descent are not found in the definition of “eligible heir,” but in another section of AIPRA. *See* 25 U.S.C. § 2206(a)(2)(B) (nontestamentary disposition; individual and tribal heirs). Thus, while Primeaux may be a co-owner of trust property that is in Decedent’s estate, that fact alone does not make him an “eligible heir,” or an heir, under AIPRA.⁴

Primeaux has failed to satisfy his burden of showing error in the ALJ’s decision. Thus, we summarily affirm the Rehearing Order.⁵

⁴ If there is no tribe with jurisdiction over the interests in trust or restricted land that would otherwise descend to eligible heirs or to a tribe, then the interests are divided equally among the co-owners of trust or restricted interests in the land. *See* 25 U.S.C. § 2206(a)(2)(C)(i). Primeaux does not dispute the Tribe’s jurisdiction over the trust or restricted real property interests in Decedent’s estate.

⁵ Included in Primeaux’s response to the OSC is a request that the Board sever the two appeals. In addition, the Tribe filed a motion to strike Primeaux’s appeal as procedurally defective and to dismiss his appeal. Our disposition renders moot Primeaux’s request and the Tribe’s motion.

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 dismisses Walkingsky's appeal (Docket No. IBIA 10-113) for failure to prosecute, and, with respect to Primeaux's appeal (Docket No. IBIA 10-120), summarily affirms the ALJ's June 22, 2010, Rehearing Order.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge