



INTERIOR BOARD OF INDIAN APPEALS

Estate of Jerome Hummingbird

55 IBIA 246 (08/31/2012)

Denying reconsideration of:  
55 IBIA 210



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ESTATE OF JEROME	)	Order Denying Reconsideration
HUMMINGBIRD	)	
	)	Docket No. IBIA 10-124-1
	)	
	)	August 31, 2012

On July 31, 2012, the Board of Indian Appeals (Board) affirmed a July 8, 2010, Order Modifying Decision *nunc pro tunc* and Dismissing Petition for Rehearing by Administrative Law Judge Richard L. Reeh (ALJ) in the estate of Jerome Hummingbird (Decedent).<sup>1</sup> 55 IBIA 210. On August 17, 2012, the Board received a document entitled “Notice of Appeal for Rehearing” from Candace Mae Colbert Odom (Appellant), which was forwarded to the Board by the ALJ.<sup>2</sup> We construe the filing as a petition for reconsideration (Petition) because Appellant asserts in the first line that it is a “notice of an appeal to the . . . Board.” See Petition at 1 (emphasis added). We deny the Petition on the grounds that no extraordinary circumstances justifying reconsideration of the Board’s decision are shown.

We affirmed the ALJ’s dismissal of Appellant’s petition for rehearing because, as the ALJ found, Appellant lacks standing to challenge the distribution of Decedent’s estate as a result of her undisputed adoption by another family. Notwithstanding her adoption, Appellant had argued before the ALJ that she is entitled to a determination that she is Decedent’s biological daughter and entitled to share in his estate. On appeal to the Board, Appellant asserted that the ALJ had a duty to determine whether tribal laws exist that would apply to Decedent’s estate, rather than the default rule, set out in the American Indian Probate Reform Act (AIPRA), 25 U.S.C. § 2201 *et seq.*, that the ALJ applied. She did not identify any tribal law that might apply and we held that, for purposes of appealing

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<sup>1</sup> Decedent was Kiowa. The probate number assigned to his estate in the Department of the Interior’s probate tracking system, ProTrac, is No. P000077553IP.

<sup>2</sup> The Board has not received a separate copy of Appellant’s petition directly from Appellant.

from the ALJ's dismissal, it was insufficient for Appellant simply "to speculate that there might be an applicable tribal law and argue that the ALJ erred in failing to inquire into that possibility." 55 IBIA at 210.

Appellant now seeks reconsideration of our decision but she fails to show any extraordinary circumstances that merit reconsideration of the Board's decision. And such is the standard that Appellant must meet: Reconsideration of decisions by the Board will be granted only in extraordinary circumstances. 43 C.F.R. § 4.315(a); *Estate of Elbert W. Exendine, Sr.*, 54 IBIA 88, 88 (2011); *Estate of William A. Hamilton, Sr.*, 52 IBIA 221, 222 (2010).

In her Petition, Appellant requests "a rehearing from [the ALJ] to ask for [t]he court to consider [t]ribal law." Petition at 2. But asking for a further investigation by the ALJ into the possibility that some tribal law might exist is simply a variant of the argument previously considered and rejected by the Board. Reiterating an argument considered by the Board does not show "extraordinary circumstances."

Appellant also appears to contend—for the first time in her Petition—that an error may have been made because Anthony Hummingbird (Anthony), whom she believes is her full biological sibling, was determined to be one of Decedent's sons and heirs, and therefore Appellant should also be an heir. Ordinarily, we do not consider arguments raised for the first time in a petition for reconsideration of a Board decision, *see Estate of Reginald Paul Walkingsky*, 52 IBIA 270, 270 (2010), but we will explain what may seem to be an inconsistency. Assuming that Appellant and Anthony are both biological children of Decedent, it is undisputed that Appellant was adopted by Dean and Virginia Colbert whereas nothing in Decedent's probate record shows that Anthony similarly was adopted out. Thus, under AIPRA, Anthony remained eligible to inherit from Decedent as one of Decedent's sons while Appellant's adoption by the Colberts severed any ties she may have had to Decedent for purposes of inheriting from him as his daughter. *See* 25 U.S.C. § 2206(j)(2)(B)(iii)(I). It is Appellant's adoption that led to different outcomes for Appellant and Anthony in the distribution of Decedent's trust estate.

Appellant bears the burden of demonstrating extraordinary circumstances for the Board to reconsider its decision, a burden that she has not met. Appellant does not disagree with the Board's decision much less does she show extraordinary circumstances for us to revisit it. Consequently, we decline to reconsider our decision or to refer this matter to the ALJ for further proceedings.

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 denies reconsideration of 55 IBIA 210.

I concur:

\_\_\_\_\_/ / original signed  
Debora G. Luther  
Administrative Judge

\_\_\_\_\_/ /original signed  
Steven K. Linscheid  
Chief Administrative Judge