



INTERIOR BOARD OF INDIAN APPEALS

Darius Peters v. Acting Midwest Regional Director, Bureau of Indian Affairs

55 IBIA 266 (09/14/2012)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

DARIUS PETERS,)	Order Affirming Decision as Modified
Appellant,)	
)	
v.)	
)	Docket No. IBIA 10-128
ACTING MIDWEST REGIONAL)	
DIRECTOR, BUREAU OF INDIAN)	
AFFAIRS,)	
Appellee.)	September 14, 2012

Darius Peters (Appellant) appeals to the Board of Indian Appeals (Board) from a June 28, 2010, decision (Decision) of the Acting Midwest Regional Director (Regional Director), Bureau of Indian Affairs (BIA). In the Decision, the Regional Director decided that he would not remove the restriction placed on Appellant’s Individual Indian Money (IIM) account for the payment of a money judgment entered against Appellant in Menominee Tribal Court (Tribal Court). The Regional Director asserts that his decision is “primarily” based on the Tribal Court judgment and on Appellant’s assent to that judgment. Appellant does not dispute that judgment was entered against him or that he agreed to the entry of judgment, nor do any of the arguments Appellant does raise undermine the decision to restrict Appellant’s IIM account or the Regional Director’s “primary” reasons for doing so. Therefore, we affirm the Regional Director’s decision to restrict Appellant’s IIM account. However, because it appears that other funds may have been available and applied to satisfy the judgment during the pendency of this appeal, we modify that portion of the Decision that states that the “full balance” of Appellant’s account will be distributed to the Tribal Court and we limit payment to the present amount due.

Background

On April 22, 2008, in a matter against Appellant in Tribal Court, *In re Darius D. Peters*, Case No. 07-JV-24 (Menominee Tr. Ct.), the Court entered an order prohibiting various Tribal entities from distributing funds being held for Appellant to Appellant or his

parents or guardians, pending the entrance of a final judgment.¹ Order to Withhold Access, *In re Peters*, Case No. 07-JV-24 (Menominee Tr. Ct. Apr. 22, 2008) (Administrative Record (AR) Tab 5). The Tribal Court stated, “monies now being held by the . . . Tribe on behalf of [Appellant] in the Menominee Indian Minors and Incompetents Trust Account *and* monies known as the ‘Year 2000 Judgment’ payment would be a source of revenue [to pay the judgment].” *Id.* (Emphasis in the original.) The administrative record also contains a motion filed by Appellant’s attorney to have the Menominee Tribal Attorney “appear in th[is] proceeding” for the purpose of “protect[ing Appellant’s] trust funds and to make sure said funds can be access[ed] or available for paying any [judgment] in this matter.” Motion for Inclusion, *In re Peters*, Case No. 07-JV-24 (Menominee Tr. Ct. July 7, 2008) (AR Tab 5). Thereafter, on August 8, 2008, the Tribal Court entered judgment against Appellant in the amount of \$5,000. Dispositional Order, *In re Peters*, Case No. 07-JV-24 (Menominee Tr. Ct. Aug. 8, 2008), at 2 (AR Tab 5). In a subsequent order, the Court found that Appellant “agreed on the amount of \$5,000” to be paid in judgment and, “based on the agreement of the parties,” the Court ordered Appellant to pay \$5,000 to Kenneth A. Fish. Order to Pay, *In re Peters*, Case No. 07-JV-24 (Menominee Tr. Ct. Dec. 8, 2008) (AR Tab 5).

Nearly 2 years later, when the judgment apparently remained unpaid, the Tribe submitted a formal request to BIA to restrict Appellant’s IIM account in accordance with the April 22, 2008, order. Letter from Tribe to BIA, Apr. 23, 2010 (AR Tab 4). In response, the Regional Director issued a letter to Appellant notifying him that, based on the Tribal Court’s order, BIA would restrict his IIM account. The Regional Director explained that Appellant’s IIM account contained his share of the per capita distribution known as the “Year 2000 Judgment.” *See* Letter from Regional Director to Appellant, Apr. 27, 2010 (AR Tab 4).² The Regional Director’s letter also informed Appellant of his right to a hearing to challenge the decision. *Id.*

Subsequent to the Regional Director’s letter to Appellant, the Tribal Court entered an order directing the payment of the judgment “from monies due to [Appellant] from his [t]rust [a]ccounts” to the Tribal Court on behalf of Kenneth Fish. Order Directing Payment, *In re Peters*, Case No. 07-JV-24 (Menominee Tr. Ct. May 28, 2010) (AR Tab 5).

¹ The Tribal court order was directed to the Menominee Tribal Social Services, Menominee Tribal Enrollment, and Menominee Tribal Finance Department. BIA is not mentioned in the order.

² The April 27 letter incorrectly identifies the date of the Order to Withhold Access as “A[p]ril 22, 2010.” Letter from Regional Director to Appellant, Apr. 27, 2010 (AR Tab 4). The Order to Withhold Access issued on April 22, 2008. *See* Order to Withhold Access (AR Tab 5).

As of the date of the Order, the Tribal Court found that the no payments had been made towards satisfying the judgment. *Id.*

Appellant invoked his right to a hearing, which then took place with the Regional Director on June 24, 2010. Hearing Transcript (Tr.) (AR Tab 3). There was no testimony or discussion during the hearing concerning any prior consent by Appellant to the payment of the judgment from his IIM account. Appellant's representative explained that he needed his IIM funds to attend college and to provide for his baby, which was due in January 2011. *Id.* at 7:1-4. Appellant's representative at the hearing asserted that Appellant "understand[s] that . . . this [judgment] ha[s] to be paid . . . and he's working on it." *Id.* at 7:13-14. Appellant asserted that he had not been able to find work and conceded that he was then unemployed. *Id.* at 5:11.

The Regional Director issued his Decision on June 28, 2010, and concluded that he would not remove the restriction on Appellant's IIM account. Decision at 2. He explained that his decision "is based primarily on the court order (Case #07 JV 24) and the fact that you, as represented by your attorney, agreed to the \$5,000 restitution amount. You also agreed to make payment from the funds maintained in your IIM account." *Id.* The Regional Director also found that Appellant did not argue that he had any basic unmet living needs and that payment of the judgment from the IIM account would not cause an undue financial burden. *Id.* The Regional Director concluded by stating that if no appeal were filed by Appellant with the Board, the "full balance maintained in [Appellant's] IIM account will be disbursed . . . to the . . . Tribal Court." *Id.*³

This appeal followed. Appellant did not file an opening brief but his notice of appeal included a statement of his reasons for his appeal. The Regional Director filed an answer brief.⁴

Discussion

We affirm the Regional Director's decision to restrict Appellant's IIM account because Appellant has not shown that the Regional Director abused his discretion. That is, Appellant does not dispute the two "primary" reasons asserted by the Regional Director for

³ The Regional Director further observed at the balance then in Appellant's IIM account would only cover approximately 66% of the judgment. Decision at 2.

⁴ Kenneth Fish, an interested party, also filed a letter with the Board, but did not respond to the Board's order to serve his letter on all interested parties and to certify to the Board that he had done so. *See* Order Concerning Service, May 3, 2011. The Board therefore did not consider Fish's letter in reaching this decision. *See* 43 C.F.R. § 4.310(b).

this portion of his Decision: Appellant has a money judgment against him and Appellant agreed to the amount of the judgment against him. We modify that part of the Decision in which the Regional Director states that he intends to disburse the “full balance” of Appellant’s account to the Tribal Court because payments may have been made in satisfaction of the judgment by Appellant or from tribally-managed accounts (e.g., the Menominee Indian Minors and Incompetents Trust Account).

IIM accounts are interest-bearing trust accounts maintained by the Secretary of the Interior for funds held for the benefit of individual Indians. 25 C.F.R. §§ 115.001, 115.002. BIA may restrict an IIM account for the purpose of, *inter alia*, paying a money judgment rendered against the account holder “under any tribal law and order code.” *Id.* §§ 115.104, 115.601(b)(3). If BIA restricts an IIM account, the account holder is entitled to notice of the restriction and a hearing to challenge it. *Id.* § 115.600. If BIA decides not to remove the restriction, the account holder may appeal that decision to the Board. *Id.* §§ 115.619, 115.107; *see also, generally*, 25 C.F.R. Part 2.

The Regional Director’s decision to restrict Appellant’s IIM account is committed to his discretion. *See Honanie v. Northwest Regional Director*, 53 IBIA 140, 148 (2011). Thus, the Board’s role in reviewing BIA’s discretionary decisions is limited: The Board will determine “whether the administrative record supports the Regional Director’s decision, whether the decision comports with the law and applicable regulations, and whether BIA has provided an explanation for its decision that is neither arbitrary nor capricious.” *Id.* at 148-49 (emphasis added). Appellant bears the burden of showing error in the Regional Director’s decision. *See id.* at 149. We ordinarily will not consider arguments that were not first presented to the Regional Director for his consideration. 43 C.F.R. § 4.318 (the scope of the Board’s review of an appeal ordinarily is limited to those issues put before the Regional Director); *Wallowing Bull-C’Hair v. Rocky Mountain Regional Director*, 49 IBIA 120, 124 (2009).

Appellant does not dispute the two bases on which the Regional Director “primarily” relied for his Decision: the Tribal Court judgment against Appellant in the amount of \$5,000 and Appellant’s express agreement to this judgment. At no time has Appellant disputed either of these facts. To the extent that the Regional Director also stated in his Decision that Appellant had agreed to pay the judgment from his IIM account, which Appellant denies, the decision still stands because this reason was not one of the Regional Director’s “primary” reasons for maintaining the restriction but simply an additional reason. *See* Decision at 2 (“You *also* agreed to make payment from . . . your IIM account.” Emphasis added.). That is, Appellant’s consent to the restriction is not required, only the opportunity to object and to convince the Regional Director to release the restriction. Moreover, Appellant admits that the parties agreed that his IIM account “would be frozen,” *see* Notice of Appeal at 1, thus conceding that he agreed to the

restriction on his IIM account, even if he did not specifically agree that the judgment would ultimately be paid from this account.

To the extent that Appellant suggests that the Regional Director lacks authority to restrict and disburse funds from Appellant's IIM account unless Appellant consents to the disbursement, we reject the argument. The Regional Director is authorized to apply IIM funds "against delinquent claims of indebtedness . . . to the tribe of which the [account holder] is a member" and "against money judgments rendered . . . under any tribal law and order code." 25 C.F.R. § 115.104; *see also id.* § 116.601(b)(3) (BIA may encumber an IIM account if it receives a money judgment rendered under a tribal law and order code). Here, the Regional Director maintains that, for purposes of the money judgment against Appellant, the Tribe has adopted Wisconsin state law, *see* Menominee Tribal Code § 124-3, and the applicable section of Wisconsin law that was applied is Wis. Stat. § 938.32(1t)(a) (2010).⁵ Appellant does not dispute the Regional Director's argument nor does he dispute that the judgment is owed to the Tribe or that he is a member of the Tribe.

Appellant also maintains that the Decision should be overturned based on alleged misrepresentation by the attorney who represented him in the Tribal Court.⁶ Appellant failed to raise this argument before the Regional Director, for which reason we decline to consider it now. *See Wallowing Bull-C'Hair*, 49 IBIA at 124. But we note that this argument, which is directed at the Tribal Court judgment, properly is raised in the Tribal Court and not before the Board in a collateral attack on the Tribe's efforts to collect funds from Appellant to pay the judgment he admits he owes and on which he apparently has made no payments. *See* 25 C.F.R. § 115.609 ("You may not challenge a court order or judgment in . . . proceeding[s] before BIA concerning a restricted IIM account[.]").

Finally, Appellant asserts that the restriction "would cause a hardship on [his] current plans for [his] future goals." Notice of Appeal at 2. The Regional Director took these goals—Appellant's plans to attend college and to provide for his unborn child—into consideration in his Decision, and did not find them persuasive. Appellant does not show any abuse of discretion in the Regional Director's consideration of Appellant's concerns, and neither do we.

⁵ The Regional Director cited to Tribal Ordinance No. 96-13 but did not provide the Board with a copy nor could a copy be located in the record. The Regional Director is reminded that he is responsible for ensuring that any documents upon which he relies, exclusive of published laws and decisions, should be available in the record or attached to his brief. The Board did locate a copy of Menominee Tribal Code § 124-3 at www.ecode360.com/ME2727, and a copy of § 124-3 has been added to the record.

⁶ Appellant claims that his counsel had a conflict of interest.

Therefore, we affirm the Regional Director's decision to continue to restrict Appellant's IIM account.

However, we modify the Regional Director's decision to disburse the "full balance" of Appellant's IIM account because the record indicates that other sources of funds may have been available, and thus may have been applied towards the judgment against Appellant, including but not limited to the Menominee Indian Minors and Incompetents Trust Account and any payments that Appellant may have made on his own. Therefore, we modify this portion of the Decision. Prior to making payment from Appellant's IIM account, the Regional Director shall confirm with the Tribal Court whether the judgment remains outstanding in whole or in part. Disbursement may only be made to the extent necessary to satisfy the judgment.

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 Regional Director's June 28, 2010, Decision as modified.

I concur:

// original signed
Debora G. Luther
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge