



INTERIOR BOARD OF INDIAN APPEALS

Estate of Kelly Lynn Walker

58 IBIA 269 (05/29/2014)



## Background

Decedent died on January 30, 1995. At the time of her death, she was a resident of the State of Oklahoma. She died owning trust personalty (i.e., funds in an IIM account) but did not own any interests in trust lands.

In a letter to the ALJ, Appellant stated:

I, Flora Dry, am making a claim on any assets that Kirby Walker Sr. may inherit from my daughter Kelly Walker.

Letter from Appellant to ALJ, June 2010 (Administrative Record (AR) Tab 32).

The ALJ held a hearing on October 20, 2010. At the hearing, the ALJ sought clarification from Appellant as to what, if any, claims she had against Decedent's estate:

[ALJ] Okay. Now, Flora, you've come forward saying that Kirby [Decedent's father] owes you money as a result of the fact that he never paid child support as he was ordered to do in a court. Is that right?  
[Appellant] Yes.

Transcript of Hearing, Oct. 20, 2010, AR Tab 10, at 6.

[ALJ] \* \* \* Your claim as I understand is against Kirby as opposed to against Kelly's estate.  
[Appellant] Yes.

AR Tab 10, at 7.

[Appellant] I was just trying to get my point across that he refused to pay child support, and he refused visitation.

AR Tab 10, at 8.

The ALJ issued the Decision on September 30, 2011, in which he determined that the distribution of Decedent's trust personalty was governed by the law of the state in which Decedent was domiciled at the time of her death, i.e., Oklahoma. The ALJ concluded that under Oklahoma state law, Decedent's Indian trust personalty is inherited by Appellant and Kirby, passing to them in equal shares.

Addressing the claim that Appellant had asserted during the hearing, the ALJ explained that Appellant's claim was not based upon any obligation of Decedent, but instead was based on Kirby's alleged obligation to Appellant for child support. Decision at 1. The ALJ determined that the Department's probate regulations did not allow for the resolution of claims by one heir at law (Appellant) against another heir (Kirby). *Id.* Thus, the ALJ determined that Appellant and Kirby inherited Decedent's estate in equal shares, unreduced by any claims against the estate.

Appellant filed a petition for rehearing, asserting that she believed she is entitled to all of Decedent's estate, based on financial support that she had provided to Decedent during Decedent's lifetime. In Appellant's words:

Kelly received all of her financial support from me. After turning 18, Kelly remained at home until her death at 20 years of age. She did not work after graduation from high school, because she was attending Northeast Vo-Tech. I continued to support her, providing money for lunch and gasoline to travel back and forth to the Vo-Tech which is about 20 miles one way. I provided for her clothing, food, [and] shelter. We did not have much money and Kelly knew this as Kelly set up the household budget after reading magazine articles on reducing debt. Kelly had plans to work after finishing Vo-Tech and had stated that she would pay me for getting her [through] Vo-Tech.

The ALJ issued the Order Denying Rehearing on October 21, 2011, denying Appellant's petition on several grounds. In relevant part, the ALJ concluded:

A petition for rehearing is not an opportunity to present evidence and arguments that were known at the time of hearing, *Estate of Bessie Hunter Snake*, 37 IBIA 58 (2001), nor is it an opportunity to start an investigation to support a new position. *Estate of Drucilla (Trucilla) W. Picard*, 50 IBIA 82 (2009). . . . If the petition is considered as a claim against the estate under 43 C.F.R. § 30.140, it is barred because it was not filed before conclusion of the first hearing. *Id.* Moreover, claims for care may not be allowed except upon clear and convincing evidence that the care was given on a promise of compensation and that compensation was expected. 43 C.F.R. § 30.143(a). No such evidence was presented. The petition fails to state any ground upon which relief may be granted.

Order Denying Rehearing at 1.

On appeal to the Board, Appellant states that she is "appealing on the grounds of the errors of fact and law [and] that evidence was not considered." Notice of Appeal.

Appellant contends that she sent a long letter to the ALJ with details of Kirby's refusal to contact their children and verbal statements that "he gave up all rights." Letter from Appellant "To Whom it May Concern," Apr. 2, 2012 (rec'd June 21, 2012). Appellant submits an affidavit in which she states that Kirby verbally declared to her in 1998 that he was relinquishing his rights to their children. *Id.*, Attachment (Affidavit of Appellant). She reiterates her assertion that she was Decedent's sole source of financial support and that she had sent documents proving that Kirby did not support Decedent financially and owed child support. Appellant submits to the Board a copy of a judgment against Kirby for unpaid child support, and sworn declarations from various individuals stating that Decedent lived with Appellant from birth until the date of her death.<sup>2</sup>

### Discussion

The Board has articulated its standard of review and scope of review in *Estate of Dominic Orin Stevens, Sr.*, 55 IBIA 53, 62 (2012), as follows:

The Board reviews factual determinations by the probate judge to determine whether they are substantially supported by the record. *Estate of Samuel Johnson (John) Aimsback (Aims Back)*, 45 IBIA 298, 303 (2007). We review legal determinations and the sufficiency of the evidence *de novo*. *Estate of Laberta Stewart*, 54 IBIA 198, 203 (2012). The burden lies with Appellant[] to show error in the Order Denying Rehearing. See *Estate of Margerate Arline Glen*, 50 IBIA 5, 21 (2009).

In seeking rehearing from the ALJ, Appellant did not contest the ALJ's conclusion that the probate proceeding was not the proper forum for considering Appellant's claim against Kirby. Nor did she contend that the ALJ had erred by failing to find that Kirby had relinquished his rights, and that Appellant should be determined to be Decedent's sole heir. To the extent Appellant seeks to raise these issues on appeal, we consider them to have been waived. But even were that not the case, we would find no basis to reverse the ALJ.

The ALJ correctly determined that he was without authority to adjudicate claims by one heir against another heir. Thus, any evidence regarding Kirby's obligations to

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<sup>2</sup> Appellant contends that certain parties to the underlying proceedings committed perjury and requests that they be arrested. The Board is not a law enforcement agency, and does not have jurisdiction to investigate or prosecute allegations of criminal conduct. As we note, the statements of concern to Appellant are not material to the legal questions at issue in determining whether the ALJ properly denied Appellant's claim against Kirby, and her subsequent claim against Decedent's estate.

Appellant—whether presented to the ALJ or to the Board on appeal—is simply irrelevant, and there was no reason for the ALJ to consider it. And it is clear from the record that the only claim that Appellant sought to assert during the hearing was a claim against Kirby—not a claim against Decedent, i.e., against Decedent’s estate.

In determining heirship, the Decision did not address Appellant’s contention that Kirby “gave up” his rights to their children, but Appellant’s letters to the ALJ did not clearly raise such a contention. In a letter to the ALJ “making a claim against any assets that Kirby” might inherit from Decedent, Appellant asserted that Kirby had “refused to have a relationship” with Decedent and told Appellant that the children were her responsibility. Letter from Appellant to ALJ, June 28, 2010 (AR Tab 32); *see also* Appellant’s Affidavit of Family History (AR Tab 29) (“Father refused contact” with Decedent and “owes thousands in child support”). During the hearing, Appellant made clear that she was asserting a claim against Kirby, and did not suggest that Kirby’s parental rights had been legally terminated. Thus, we find no fault in the ALJ’s decision for not addressing Kirby’s parental status in the context of determining that he and Appellant are Decedent’s heirs as a matter of law. And even if Appellant had preserved such an argument for appeal, we would find it without merit. There is no evidence in the record that Kirby’s legal father-daughter relationship was ever terminated, and the evidence proffered by Appellant does not demonstrate that it was.

With respect to the issue that Appellant *did* raise in her petition for rehearing, and thus preserve for this appeal, we affirm the ALJ’s ruling. For the first time in her petition for rehearing, instead of asserting a claim against Kirby, Appellant attempted to assert a claim against *Decedent’s estate*, based on alleged financial support Appellant provided to Decedent and an alleged oral promise made by Decedent to reimburse Appellant for certain expenses. As the ALJ noted, a petition for rehearing may not raise a new issue without properly supported justification from the petitioner to excuse the failure to raise that issue earlier. Appellant’s petition for rehearing was not accompanied by any explanation for why Appellant failed to assert the claim against Decedent’s estate at the hearing. More significantly, as the ALJ found, Appellant’s claim against Decedent’s estate was barred because she failed to present it “before the conclusion of the first hearing.” Order Denying Rehearing at 1; 43 C.F.R. § 30.140(a).<sup>3</sup> Section 30.140(a) provides that “[c]laims that are not filed by the conclusion of the first hearing are barred.” Thus, the ALJ correctly

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<sup>3</sup> At all times relevant to this appeal, the Department’s regulations have barred claims not filed prior to the conclusion of the first hearing. *See* 43 C.F.R. § 4.250(a) (1995) (“All claims against the estate of a deceased Indian . . . shall be filed . . . prior to the conclusion of the first hearing, and if they are not so filed, they shall be forever barred.”) All references hereinafter cited are to the regulation cited by the ALJ, i.e., 43 C.F.R. § 30.140.

determined that Appellant's claim against Decedent's estate was untimely.<sup>4</sup> Although Appellant reiterates her arguments on appeal that she supported Decedent financially, she does not contest the ALJ's determination that this claim was untimely.

Because Appellant has not met her burden of establishing that the ALJ erred, we affirm the Order Denying Rehearing.

### 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 Order Denying Rehearing.

I concur:

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// original signed  
Scott K. Fukumoto  
Acting Administrative Judge

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//original signed  
Steven K. Linscheid  
Chief Administrative Judge

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<sup>4</sup> In the Order Denying Rehearing, in addition to finding Appellant's claim against Decedent's estate to be untimely, the ALJ addressed the substance of the claim. The ALJ found that this claim would appropriately be characterized as a claim based on care provided to Decedent. At all times potentially relevant to the proceedings, the Department's regulation concerning claims based on care provided to a decedent has remained unchanged in its requirement that "[c]laims for care will not be allowed except upon clear and convincing evidence that the care was given on a promise of compensation and that compensation was expected." *See* 43 C.F.R. § 4.250(d) (1971); 43 C.F.R. § 4.250(d) (1995); 43 C.F.R. § 4.250(d) (2001); 43 C.F.R. § 4.250(d) (2005); and 43 C.F.R. § 30.143(a) (2011). The ALJ concluded that Appellant's unsworn written statement that Decedent had orally agreed to reimburse Appellant for care and financial support does not constitute clear and convincing evidence that the alleged care provided was given on a promise of compensation, and that Appellant expected compensation. On appeal, Appellant offers no argument against these findings or conclusions by the ALJ.