



INTERIOR BOARD OF INDIAN APPEALS

Estate of Floyd Bill (Lindy J. Billy-Harrison appeal)

60 IBIA 136 (03/19/2015)

Related Board case:

60 IBIA 268



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF FLOYD BILL)	Order Affirming Denial of Rehearing
)	
(Lindy J. Billy-Harrison appeal))	Docket No. IBIA 12-155
)	
)	March 19, 2015

Lindy J. Billy-Harrison (Appellant) appealed to the Board of Indian Appeals (Board) from an Order Denying Rehearing entered on August 16, 2012, by Administrative Law Judge (ALJ) Thomas F. Gordon in the estate of Floyd Bill (Decedent).¹ The Order Denying Rehearing let stand a December 8, 2011, Order Determining Heirs in which the ALJ found that, for Federal probate purposes, Appellant is not Decedent’s daughter and therefore not entitled to a share of his Indian trust estate. As grounds for rehearing, Appellant argued that if granted a rehearing she would then provide additional evidence that she is a child of Decedent, including an order of paternity that she was seeking to have issued by the Yakama Tribal Court and “DNA or other appropriate scientific proof.” Because Appellant identifies no error by the ALJ, and proper grounds for rehearing do not include requests for additional time to seek evidence, the Board affirms the Order Denying Rehearing.

Background

Decedent died intestate (i.e., without a will) on February 2, 2000, in Toppenish, Washington. Order Determining Heirs, Dec. 8, 2011, at 2 (unnumbered) (Administrative Record (AR) Tab 6). The ALJ held a hearing on October 26, 2011,² to determine

¹ Decedent, a.k.a. Floyd Oscar Billy-Harrison, was a Confederated Tribes and Bands of the Yakama Nation (Yakama) Indian. His probate case is assigned Probate No. P000000743IP in the Department of the Interior’s probate tracking system, ProTrac.

Another appeal from the Order Denying Rehearing was filed by Yakama Nation Credit Enterprise, and is separately docketed as *Estate of Floyd Bill* (Yakama Nation Credit Enterprise appeal), Docket No. IBIA 12-159.

² A hearing was originally held on August 14, 2003, by ALJ William E. Hammett, who concluded that the record contained insufficient information regarding the purported children of Decedent, and removed the case from the docket pending receipt of additional (continued...)

Decedent's heirs and settle the estate. *See* Hearing Transcript (Tr.), Oct. 26, 2011 (AR Tab 11). Decedent's ex-wife, Iris Billy-Harrison (Iris); son, Lael Billy-Harrison (Lael); daughter, Linda Bill (Linda), and Appellant attended and testified at the hearing. *See generally, id.*

Appellant and Iris testified that Appellant was the biological daughter of Decedent, but that because Iris was "still legally married" to one John LaRoque at the time of Appellant's birth, Appellant's birth certificate identified John LaRoque as her father and LaRoque as her last name. *Id.* at 14-16. Appellant explained that she had since obtained a change of last name to Billy-Harrison, and that she was seeking another birth certificate to show Decedent as her father. *Id.* at 6-7, 17. Appellant offered into evidence an "altered" Montana birth certificate and an "amended" Montana birth certificate, both of which listed Appellant's last name as Billy-Harrison and listed her father as John LaRoque. Hearing Tr. at 18; Amended Birth Certificate, Dec. 4, 2009 (AR Tab 9); Altered Birth Certificate, June 7, 2006 (AR Tab 9).

In his December 8, 2011, Order Determining Heirs, the ALJ concluded that, for Federal probate purposes, Appellant is not the biological child of Decedent and therefore not entitled to a share of his trust estate. Order Determining Heirs at 1 (unnumbered). The ALJ reasoned that "[a] name change obtained after [D]ecedent's date of death is not persuasive evidence of paternity, especially where the altered and amended birth certificates were only modified with respect to [Appellant's] last name, and the named father remains 'John LaRoque.'" *Id.* In addition, the ALJ noted that Decedent had specifically disavowed Appellant as his child. *Id.* In a 1985 sworn statement apparently made in connection with Decedent's divorce from Iris, Decedent acknowledged Lael as his son.³ Decedent's Affidavit, Oct. 8, 1985 (AR Tab 9); *see also In re Iris Billy-Harrison and Floyd Billy-Harrison*, No. 84-3-01632-1 (Wash. Yakima Cty. Super. Ct. Oct. 30, 1985), at 1-2 (AR Tab 9) (determining custody of a male child). Decedent further swore that he did "not wish to have [his] ex-wife's children using [his] name," as he had not adopted the children, and identified one of the children as "Lindy LaRoque." Decedent's Affidavit. The ALJ found that "[D]ecedent's sworn testimony, coupled with the absence of any court order determining his paternity with respect to [Appellant] and the lack of any birth certificate

(...continued)

information from the Bureau of Indian Affairs (BIA). *See* Order Striking Case From Docket, Jan. 31, 2005 (AR Tab 9).

³ Subsequently, Decedent acknowledged in open court, and the Yakama Tribal Court decreed, that he is also the father of Linda. *In re Floyd Bill*, No. P-92-155 (Yakama Tribal Ct. Dec. 22, 1992) (AR Tab 9); *see also* Linda's Birth Certificate, Jan. 5, 1993 (identifying Decedent as her father) (AR Tab 9).

identifying him as the father of [Appellant],” supported the conclusion that Appellant is not Decedent’s daughter and therefore not entitled to a share of his trust estate. Order Determining Heirs at 2 (unnumbered). The ALJ distributed the estate in one-half shares each to Lael and Linda. *Id.*

Appellant filed two petitions for rehearing, one handwritten and the other typed. *See* Letter from Appellant to Office of Hearings and Appeals (OHA), Jan. 6, 2012 (Handwritten Petition) (AR Tab 2); Letter from Appellant to OHA, Jan. 6, 2012 (Typed Petition) (AR Tab 2). Appellant stated that at the time of the probate hearing she believed that she had submitted sufficient evidence of paternity, and that since the hearing she had “discovered” additional evidence. Typed Petition. Appellant submitted an unsworn statement by Jonathan Martin, who stated that he represented Decedent and Iris during the 1980s “on several matters,” that his records were destroyed, and that as he recalled, Decedent “always maintained that [Appellant] was his daughter, and acknowledged her as such.” *Id.*, Attach. (Letter from Martin, Jan. 4, 2012). Appellant also promised that, “at the rehearing,” she would provide “DNA or other appropriate scientific proof” of paternity. Typed Petition. Appellant further promised that she would at that time provide a Yakama Tribal Court order declaring her the natural daughter of Decedent, and that a tribal court hearing on the matter was scheduled for January 10, 2012.⁴ *Id.* Finally, Appellant stated that she was “requesting a DNA/Paternity test ordered by the court to prove that [Linda] is not the biological child of [Decedent],” and asked that Iris “be added to the probate” to reimburse her for funeral and memorial expenses. Handwritten Petition at 1-2 (unnumbered).

On August 16, 2012, the ALJ denied Appellant’s request for rehearing. Order Denying Rehearing at 3 (AR Tab 2). The ALJ noted that the statement of Jonathan Martin was unsworn, and found that even if it were true, Martin’s recollection that Decedent always maintained and acknowledged that Appellant was his daughter would not overcome Decedent’s affidavit specifically denying paternity. *Id.* In addition, the ALJ rejected Appellant’s promise to offer DNA proof upon rehearing as insufficient to establish error in the Order Determining Heirs, and advised that OHA does not have authority to order DNA testing. *Id.* (citing *Estate of Gordon Lee Ward*, 51 IBIA 88 (2010)). Thus, the

⁴ The hearing was apparently scheduled based on a submission by Appellant to the Yakama Tribal Court on January 4, 2012. *See* Information Sheet for Paternity, filed Jan. 4, 2012 (AR Tab 2).

ALJ concluded that Appellant failed to meet her burden to show why rehearing was warranted.⁵ *Id.*

Appellant appealed to the Board. Notice of Appeal, Sept. 11, 2012. No pleadings have been filed with the Board by any other interested parties. Appellant does not allege any specific error by the ALJ and instead relies on additional “new evidence” to support her claim that Decedent is her father, including a Yakama Tribal Court order determining that Decedent is her natural father and a new “altered” Montana birth certificate naming Decedent as her father. *Id.* at 1 (unnumbered) & Attach. (*In re Lindy J. Billy-Harrison*, No. P-12-039 (Yakama Tribal Ct. July 13, 2012) (Order of Paternity)); Letter from Appellant, Nov. 6, 2012 & Attach. (Altered Birth Certificate, Oct. 29, 2012). Within the timeframe for submitting her opening brief, Appellant also submitted documents from a criminal proceeding in 1984 in the Superior Court of Klickitat County, Washington, in which Decedent was alleged to be Appellant’s biological father. Letter from Appellant, received Apr. 15, 2013, Attach. The Board affirms because Appellant fails to meet her burden on appeal to show error by the ALJ in the Order Denying Rehearing, and because proper grounds for rehearing do not include requests for additional time to obtain evidence—which is to what Appellant’s petition fundamentally amounted. Further, Appellant’s new evidence submitted for the first time on appeal to the Board, and thus never considered by the ALJ, is outside the scope of this appeal from the Order Denying Rehearing.

Discussion

I. Standard of Review

The burden lies with Appellant to show that the ALJ’s Order Denying Rehearing is in error. *Estate of Josephine J. Palone*, 59 IBIA 49, 52 (2014). Simple disagreement with or bare assertions concerning a challenged decision are insufficient to carry an appellant’s burden of proof. *Estate of Sarah Stewart Sings Good*, 57 IBIA 65, 72 (2013); *Estate of Drucilla (Trucilla) W. Pickard*, 50 IBIA 82, 91 (2009). The Board reviews factual determinations by the probate judge to determine whether they are substantially supported by the record. *Estate of Sings Good*, 57 IBIA at 71; *Estate of Dominic Orin Stevens, Sr.*, 55 IBIA 53, 62 (2012). We review legal determinations and the sufficiency of the evidence *de novo*. *Estate of Sings Good*, 57 IBIA at 72. Unless manifest error or injustice is shown, the Board’s scope of review is limited to reviewing those issues brought before the ALJ on

⁵ The ALJ also found that, because Iris had failed to submit a claim for reimbursement prior to the conclusion of the probate hearing, her claim was barred. Order Denying Rehearing at 3 (citing 43 C.F.R. § 30.140(a)).

rehearing. 43 C.F.R. § 4.318; *Estate of Stevens*, 55 IBIA at 62. Therefore, we ordinarily will not consider allegations of error or evidence that could have been, but were not, presented to the probate judge. *Estate of Sings Good*, 57 IBIA at 72; *Estate of Stevens*, 55 IBIA at 62.

II. Analysis

Appellant does not meet her burden to show error by the ALJ in denying Appellant's petition for rehearing based on newly discovered evidence. The ALJ properly determined that Jonathan Martin's unsworn statement that Decedent acknowledged Appellant as his daughter was insufficient to overcome Decedent's affidavit specifically disputing paternity.⁶ And Appellant's assurances to the ALJ that, once she was granted a rehearing, she would provide additional new evidence in the form of DNA test results and a Yakama Tribal Court order, were patently insufficient grounds for obtaining a rehearing. A petition for rehearing based on new evidence "must" be accompanied by one or more "affidavits of witnesses stating fully the content of the new evidence," and explain "the failure to discover and present that evidence at the [probate] hearings." 43 C.F.R. § 30.238. Appellant provided no affidavits and offered only bare promises of new evidence. Nor was Appellant's belief that she had presented adequate other evidence of paternity to the ALJ a valid excuse for Appellant's failure to obtain and submit the promised evidence at the probate hearing. *See* Typed Petition. The time for Appellant to have presented her case was at the probate hearing. *See Estate of Pickard*, 50 IBIA at 92 (2009). And we have consistently held that "proper grounds" for rehearing, i.e., grounds that appear to "show merit," 43 C.F.R. § 30.240, "do *not* include requests for additional time to seek evidence." *Estate of Rachel Nahdayaka Poco*, 54 IBIA 248, 251 (2012); *Estate of Pickard*, 50 IBIA at 92 ("A petition for rehearing is *not* an opportunity for a contestant to start an investigation to support her position."). Appellant's petition essentially amounted to a request for additional time to gather evidence, as it was chiefly based on "evidence" that did not yet exist, i.e., a tribal court order and DNA test results.

We turn now to Appellant's new evidence submitted for the first time on appeal, including the Yakama Tribal Court order of paternity and Montana birth certificate showing Decedent as her father, as well as records from the 1984 criminal proceeding. The

⁶ We also note that when a child is conceived and born during the course of a valid marriage, it is presumed that the child's parents are the husband and wife. *Estate of Thomas Jefferson Boe*, 56 IBIA 15, 16 (2012); *Estate of Anthony "Tony" Henry Ross*, 44 IBIA 113, 120 (2007). It is unclear whether the ALJ applied the presumption, but the record appears to support its application. According to undisputed hearing testimony, Iris was still legally married to John LaRoque at the time of Appellant's birth. Hearing Tr. at 14-16.

fact that Appellant has provided on appeal some of the promised new evidence, and other new evidence, does not cure Appellant's failure to submit a properly supported petition for rehearing *to the ALJ*. The focus of these proceedings is on whether the ALJ committed some error in the Order Denying Rehearing—not on whether Appellant would meet the standard for rehearing based on evidence never provided to the ALJ for consideration. *See* 43 C.F.R. § 4.320 (as relevant to this appeal, the Board's jurisdiction is limited to review of an order on a petition for rehearing); *Estate of Pickard*, 50 IBIA at 92 (“An appeal is not ordinarily an opportunity for presenting a new case, with information never provided in the hearing or in a petition for rehearing.”). Thus, absent a showing of manifest error or injustice, *see* 43 C.F.R. § 4.318, the Board ordinarily will not consider arguments or evidence presented to it for the first time on appeal, *Estate of Edward Teddy Heavyrunner*, 59 IBIA 338, 351 (2015); *Estate of Florence Wilson Rowland*, 47 IBIA 159, 165 (2008). Appellant does not explain why this case warrants an exception, and we conclude that it does not.

The tribal court order of paternity, the new birth certificate, and the documents from the criminal proceeding are not, individually or collectively, conclusive as to Appellant's descent from Decedent. The tribal court order was issued after Decedent's passing, and thus Decedent had no opportunity to contest paternity in the tribal court proceeding. In addition, it is unclear what proof of paternity Appellant showed to obtain the tribal court order.⁷ A court order determining paternity is based on evidence and is only as reliable as the evidence on which it is based. While not entirely clear, it appears that the new “altered” Montana birth certificate was issued, in turn, based on the tribal court order. *See* Order of Paternity (ordering that “the birth certificate should be amended to remove John LaRoque” and identify Decedent as Appellant's father). Regardless, there is no record of any evidence used to support the alteration. Nor is it apparent from the documents submitted on appeal by Appellant whether any finding of paternity was made in the criminal proceeding. Therefore, we are not persuaded that considering this additional evidence on appeal is either warranted or would demonstrate error in the ALJ's decision.

⁷ The “Information Sheet for Paternity” that Appellant filed with the Yakama Tribal Court, *see supra* note 4, does not attach any supporting evidence to support the assertion on the form that Decedent is Appellant's father. Further, while a “Paternity Hearing Appointment” notice instructs that both parents must be present and have valid photo identification, that requirement was apparently substituted for a handwritten instruction to bring “2 family members from dad's side.” Handwritten Petition, Attach. The Yakama Tribal Court order does not indicate who attended the hearing and testified on Appellant's behalf.

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 August 16, 2012, Order Denying Rehearing.

I concur:

// original signed
Thomas A. Blaser
Administrative Judge

//original signed
Robert E. Hall
Administrative Judge