



INTERIOR BOARD OF INDIAN APPEALS

Estate of Floyd Bill (Yakama Nation Credit Enterprise appeal)

61 IBIA 30 (06/17/2015)

Denying Petition for Reconsideration of:
60 IBIA 268



United States Department of the Interior

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ESTATE OF FLOYD BILL) Order Denying Reconsideration
(Yakama Nation Credit Enterprise appeal))
) Docket No. IBIA 12-159-1
)
) June 17, 2015

On May 6, 2015, the Board of Indian Appeals (Board) affirmed in part and reversed in part an Order Denying Rehearing entered by Administrative Law Judge (ALJ) Thomas F. Gordon in the estate of Floyd Bill (Decedent).¹ *See Estate of Floyd Bill*, 60 IBIA 268 (2015). On June 9, 2015,² the Board received a petition for reconsideration (Petition) from the Yakama Nation Credit Enterprise (Appellant or YNCE) seeking reconsideration of that part of our decision affirming the ALJ’s denial of rehearing in regard to disallowance of a claim that the ALJ determined had been in default for more than 6 years, and was therefore barred pursuant to the State of Washington statute of limitations for such claims. We deny the Petition on the grounds that no extraordinary circumstances justifying reconsideration of the Board’s decision are shown.

As relevant to the Petition, we affirmed the ALJ’s conclusion that if the regulations in effect at the time of Decedent’s death on February 2, 2000, governed claims payment, as Appellant argued, the Farm Loan claim would be disallowed pursuant to 43 C.F.R. § 4.250(e), which provided:

A claim, whether that of an Indian or non-Indian, based on a written or oral contract, express or implied, where the claim for relief has existed for such a period as to be barred by the State laws at date of decedent’s death, cannot be allowed.

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.

² The petition was filed on June 5, 2015, as shown by the date of the postmark, thereby satisfying the 30-day filing requirement for such petitions under our regulations. *See* 43 C.F.R. § 4.315(a).

43 C.F.R. § 4.250(e) (2000).³ This regulation adopted state law to limit claims against individual Indian trust estates in probate, and the ALJ determined that § 4.16.040 of the Revised Code of Washington (RCW) would bar the Farm Loan claim because it had been in default for more than 6 years. *Estate of Bill*, 60 IBIA at 278-79.

Appellant seeks reconsideration of our affirmance of this part of the ALJ's Order Denying Rehearing and argues two grounds for doing so. First, Appellant argues that the Board erred in applying this provision to YNCE's claim because doing so constitutes "an abrogation of tribal sovereign immunity." Petition at 2. Second, Appellant also contends that YNCE's claim would not be barred under Washington law on two separate grounds: (1) the limitations period runs from the date of the last payment on a delinquent claim and the record shows a payment had been made less than 1 month before Decedent's death, and (2) Washington law recognizes tribal governments as sovereigns and also the principle that the state, when acting as a sovereign, is not subject to statutes of limitation unless it waives sovereign immunity. *Id.* We deny Appellant's Petition, as we explain below, because Appellant fails to meet its burden imposed by the Federal regulation governing petitions for reconsideration.

The Board's standard for reviewing petitions for reconsideration is well-established: Reconsideration of a Board decision "will be granted only in extraordinary circumstances." 43 C.F.R. § 4.315(a); *Gopher v. Rocky Mountain Regional Director*, 60 IBIA 315, 315 (2015); *Estate of Jerome Hummingbird*, 55 IBIA 246, 247 (2012); *Estate of Jesse J. James*, 8 IBIA 293, 293 (1981) (applying the then new regulation governing petitions for reconsideration published January 23, 1981).

Appellant's argument that the ALJ, and this Board, cannot subject its claim to a state-based statute of limitations because YNCE is a tribal entity and the Yakama Nation has not waived its sovereign immunity simply reiterates an argument made in the prior proceeding and that we addressed in our decision. Appellant argues that YNCE, as a tribal entity of a sovereign tribe, is not subject to state law absent waiver of tribal sovereign immunity. We did not disagree with this principle of law in our decision, nor do we at this time. *Estate of Bill*, 60 IBIA at 279. As we explained, the Federal regulation merely adopted the state-based statute of limitations applied to contracts "for the limited purpose

³ We reversed the ALJ's conclusion that Appellant's claims were governed by the regulations in effect when the ALJ issued his decision. Because we apply the regulations in effect at the time of the decedent's death to matters concerning claims payment in probate cases, we cite to the regulations published in the 2000 edition of title 43 of the Code of Federal Regulations.

of resolving claims against the trust estates of individual Indian decedents during probate.” *Id.* at 279. We do not agree, however, that the Nation, or YNCE, is not subject to Federal regulations applying to the probate of individual Indian trust estates. The adoption of a state standard as the metric applied by a Federal regulation does not subject the Nation or YNCE to state law. *See id.* at 280 (“The limited purpose adoption of a state-defined statute of limitations is distinct from, and in no way diminishes, the authority of the Yakama Nation over its members, nor does it otherwise impose state control over contractual relationships . . .”).

Nor do we agree with Appellant’s argument that in construing § 4.250(e) we erred in failing to construe the word “Indian” as limiting the provision to individuals, and as not intended to apply to tribal governments. Petition at 3. We read the phrase “[a] claim, whether that of an Indian or non-Indian” broadly, and as applying to all claimants—Indian or non-Indian—whether they be individuals or tribal, state, or federal entities.

Federal agencies bringing claims against an individual Indian trust estate are also subject to the strictures of Federal probate regulations, as we found in *Wilkinson v. Aberdeen Area Director*, 32 IBIA 265 (1998). In that case, the Farmers Home Administration, later named the Farm Service Agency (FSA), a Federal agency within the U.S. Department of Agriculture, held an “Assignment of Income from Trust Property” entered into with the appellant and his wife, Mollie, as security for a mortgage of their trust property.⁴ *Wilkinson*, 32 IBIA at 265-66. Four months after Mollie’s death, FSA demanded that BIA make payment on the appellant’s mortgage, stating that it had “exhausted all other sources of collection.” *Id.* at 266. BIA forwarded FSA’s demand letter to the probate judge handling Mollie’s estate. *Id.* at 267. The probate judge did not recognize any claim from FSA when distributing Mollie’s estate. *Id.* The Board noted that “the fact that the Judge did not rule on [the FSA] claim . . . suggests that no claim was properly filed. Although ¶ 6 of the Assignment gives FSA’s claim priority over Mollie’s heirs, it would not excuse FSA from filing a claim during probate of Mollie’s trust estate.” *Id.* at 269 n.5. We do not see a legal distinction between a Federal regulation imposing a deadline for filing claims and a Federal regulation adopting a state-based limitations period for determining whether a claim will be allowed during probate of the trust estate. The regulations governing individual Indian trust estates at probate apply to all claimants, Indian and non-Indian.

Appellant’s second argument, that (a) under Washington State law the limitations period runs from the last payment made and the account history indicates that payments

⁴ The Farm Loan in the instant matter was secured by a similar instrument, an Assignment of Trust Property and Power to Lease, entered into by Decedent and YNCE. *See Estate of Bill*, 60 IBIA at 271 n.4.

were made against the Farm Loan less than 1 month before Decedent's death, and (b) Washington State recognizes tribes as sovereigns and Washington State law does not apply statutes of limitations against the State when acting in its sovereign capacity, were not argued by Appellant before the Board in the appeal of the Order Denying Rehearing. The Board has a well-established practice of not considering arguments raised for the first time in a petition for reconsideration. *See Siemion v. Rocky Mountain Regional Director*, 49 IBIA 194, 194-95 (2009). Both parts of Appellant's second argument for reconsideration could have been raised, but were not, in prior proceedings. As we noted in our decision, "Appellant does not dispute that the loan was in default as of mid-1989, nor did it bring forward any evidence that an action to enforce loan repayment had been brought against the borrowers by July 1995," the date after which the ALJ determined the claim would have been barred under State law and therefore disallowed under federal probate regulations. *Estate of Bill*, 60 IBIA at 279. Appellant also did not dispute on appeal the ALJ's determination that RCW § 4.16.040 properly defined the limitations period for contracts under Washington State law. *See id.* Since both arguments could have been raised in prior proceedings, we see no reason to deviate from our established practice in this instance.

Appellant bears the burden of demonstrating extraordinary circumstances, but has failed to do so. We therefore deny its petition for reconsideration.⁵

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 denies reconsideration of 60 IBIA 268.

I concur:

// original signed
Robert E. Hall
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge

⁵ We note that our denial of reconsideration here is not a merits determination of the new arguments advanced in Appellant's Petition, nor should our decision here be read as an indication of how the Board would consider such arguments if properly presented.