



INTERIOR BOARD OF INDIAN APPEALS

Estate of Jack Eder

61 IBIA 86 (07/09/2015)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ESTATE OF JACK EDER ) Order Affirming Denial of Reopening  
)  
) Docket No. IBIA 13-091  
)  
) July 9, 2015

Margaret J. Eder-Vague (Appellant) appealed to the Board of Indian Appeals (Board) from an Order Affirming Decision and Denying Reopening (Order Denying Reopening) entered on April 25, 2013, by Administrative Law Judge (ALJ) R. S. Chester in the estate of her father, Jack Eder (Decedent).<sup>1</sup> In her petition for reopening, Appellant contended that her stepmother, Geraldine Eagle Eder (Geraldine), should not have inherited from Decedent’s estate because she participated in Decedent’s murder. The Order Denying Reopening left in place the December 11, 1979, Order Determining Heirs (Decision), which distributed Decedent’s estate to Geraldine and to Decedent’s six children, including Appellant. We affirm the Order Denying Reopening. Appellant failed to set forth evidence that demonstrated her petition was timely or that there was an error of fact or law that, if left uncorrected, would result in a manifest injustice. Moreover, with the death of Geraldine in 1998 and the passage of time, the ALJ would not be able to determine whether, at the time of Decedent’s death in 1978, Geraldine possessed the requisite felonious intent to evoke the equitable principles underlying any so-called “slayer statute” that may have been applicable at the time.

## Background

Decedent died in Fresno, California on December 29, 1978. Certificate of Death (Administrative Record (AR) Tab 7). His death was determined to be a homicide caused by multiple stab wounds to the heart and lungs. *See* Amendment of Medical and Health Section of Certificate of Death (AR Tab 7). Geraldine, Decedent’s wife, and Angela Lopez,

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<sup>1</sup> Decedent was a Fort Peck Indian. The original number assigned to Decedent’s probate was IP BI 559 D 79. The probate was subsequently assigned number P000102141IP in the Department of the Interior’s probate tracking system, ProTrac.

Geraldine's niece,<sup>2</sup> were considered suspects in Decedent's death. *See* Incident Report No. 78-53001, Fresno Police Dept., Dec. 29, 1978 (Incident Report) (AR Tab 4). Lopez was reportedly convicted of the homicide, while Geraldine "was not convicted 'for various reasons.'" <sup>3</sup> Memorandum for Files, July 25, 1979 (record of call from Police Department) (AR Tab 4); *see also* Probate Judge's Copy of Incident Report No. 78-53001, Dec. 29, 1978 (AR Tab 4) (bearing the handwritten annotation "Convicted" beside Lopez's name and "Exonerated" beside Geraldine's name). The original probate record also contains the handwritten statement by the probate judge on the OHA-7 form that "Geraldine Eagle Eder was tried for the murder of Jack Eder, but was [e]xonerated per report # 78-53001 as per certified copy of the Police Report (Fresno Calif[.]) furnished this office." Data for Heirship Finding and Family History, July 23, 1979, at 3 (AR Tab 7).

On December 11, 1979, ALJ Alexander H. Wilson issued the Decision, in which he determined that Decedent had died intestate (i.e., without a will), and that Decedent's surviving spouse, Geraldine, and Decedent's six children were the heirs to Decedent's estate. Decision (AR Tab 5). At that time, the inventory of Decedent's estate included only trust property on the Fort Peck Indian Reservation in Montana, and Decedent's estate was divided pursuant to Montana State rules of intestate succession.<sup>4</sup> *Id.*; *see also* Inventory and Appraisal of Indian Trust Lands of Jack Eder, Aug. 10, 1979 (AR Tab 7).

In 2012, Appellant sought to reopen Decedent's probate case. Petition for Reopening, Feb. 7, 2012 (AR Tab 4). In her petition, Appellant argued that Geraldine should have been prevented from inheriting from Decedent's estate due to her participation in Decedent's murder. *Id.* (referencing as authority the "slayer statute," which "prevent[s] killers from inheriting from their victims, obtaining title to land by murdering a joint tenant, or receiving life insurance benefits from policies insuring their victims"). *Id.* Appellant stated that Geraldine had "handed the knives to the person" who stabbed Decedent to death. *Id.* Appellant also alleged that, because Geraldine had died, the person

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<sup>2</sup> *See* Order Denying Reopening at 3 (AR Tab 4). The record provided to the Board does not otherwise identify the relationship of Angela Lopez to Decedent or to Geraldine.

<sup>3</sup> The record does not contain any documentation of the charges brought against Lopez, or of any judicial proceeding involving Lopez or Geraldine in relation to Decedent's death.

<sup>4</sup> The inventory of Decedent's estate was apparently amended six times to include various interests in trust property in North Dakota and South Dakota held by Decedent at the time of his death. Supplemental Documents Submitted by Appellant, May 21, 2015, Exhibits 1-6. For each amendment, the estate was administratively modified to distribute the newly identified trust property in accordance with the laws of the state where that property was located. *See id.* These late-filed documents are of no relevance to our decision here.

who had killed Decedent now “possesse[d]” Decedent’s land. *Id.* Appellant concluded by stating that Decedent’s probate should be reopened “because information and evidence was not presented at the time of the hearing that would drastically change the inherited assets because of . . . who was involved in the death of [Decedent] and that the courts were not aware of . . . at the time of the hearing.” *Id.* Appellant attached to her petition a letter from the Fresno County coroner to the Veterans Administration, dated August 9, 1979, stating that Geraldine was “arrested in connection with the stabbing death of [Decedent],” but that she had been released and, as of the date of the letter—more than 8 months after Decedent’s death—no charges had been filed against her. Letter from Fresno Coroner to Veterans Administration (AR Tab 4).

On April 25, 2013, the ALJ issued his Order Denying Reopening, concluding that Appellant’s petition was untimely. Order Denying Reopening at 1-2. Under the probate regulations, an interested party may file a petition for reopening “more than 3 years after the date of the original decision and within 1 year after the petitioner’s discovery of an alleged error.” 43 C.F.R. § 30.243(a)(3). The ALJ stated that Appellant was present during the probate hearing held October 24, 1979. Order Denying Reopening at 2. He noted that during the hearing one of Decedent’s children, Martin Eder, had inquired about Geraldine’s potential involvement in his father’s death. *Id.* The ALJ quoted a passage from the transcript indicating that the probate judge had explained the circumstances of Decedent’s death off the record to those present at the hearing. *Id.*

The ALJ acknowledged that it was not possible, based on the hearing transcript, to know exactly what information was shared with the hearing attendees about Geraldine’s potential involvement in Decedent’s death, but that since Appellant was present at the hearing, she “had to have had some notion that Geraldine may have been involved in her father’s murder and the Decision might contain an error.” *Id.* at 2-3. He therefore concluded that Appellant’s petition for reopening, filed 32 years after the original probate decision, was untimely. *Id.* at 3.

Responding to Appellant’s allegation that Geraldine’s daughter stabbed Decedent and later inherited his land following Geraldine’s death, the ALJ clarified that the individual convicted of Decedent’s murder, Geraldine’s niece, had not inherited any of Decedent’s property from Geraldine. *Id.* Finally, he reasoned that the original probate judge had more information pertaining to the circumstances of Decedent’s death—as he not only had the police report, but he may have spoken to an officer involved in the investigation—and that public policy dictated that the estate be considered final. *Id.*

Appellant timely appealed the Order Denying Reopening to the Board. She filed an opening brief, and also filed supplemental documents after the conclusion of the briefing period.

## Standard of Review

An appellant bears the burden of showing error in the Order Denying Reopening. *Estate of George Umtuch, Jr.*, 58 IBIA 205, 207 (2014). Mere disagreement with or bare assertions concerning a challenged decision are insufficient to satisfy an appellant's burden. *Id.* Absent extraordinary circumstances, the scope of an appeal is limited to the issues and evidence that were presented to or considered by the administrative law judge. *Estate of Josephine Mechance*, 60 IBIA 247, 250 (2015). We generally do not consider arguments raised for the first time on appeal. *Id.*

## Analysis

We conclude that Appellant has not met her burden of showing that the ALJ erred in denying reopening. Interested parties may file a petition for reopening more than 3 years after the date of the original probate decision and within 1 year after the petitioner's discovery of an alleged error to correct "an error of [f]act or law in the original decision which, if not corrected, would result in a manifest injustice." 43 C.F.R. § 30.243(a)(3). The petition for reopening must set forth all grounds for reopening and must include "all relevant evidence, in the form of documents or affidavits, concerning *when* the petitioner discovered the alleged error." *Id.* § 30.243(b)-(c) (emphasis added). Appellant's petition failed to include any evidence that it was timely filed. Even if we were to accept that Appellant's petition was timely filed, we would still affirm the denial of reopening because what Appellant seeks here—a determination that Geraldine acted with felonious intent in Decedent's murder—is not available under the circumstances. Geraldine died in 1998 and is therefore unable to provide, or contest, any evidence or allegations that could be presented at a hearing before a probate judge. We therefore affirm the ALJ's denial of reopening.

It is the "[a]ppellant's responsibility to submit sufficient relevant evidence to the ALJ along with the petition for reopening," to demonstrate that it was timely filed within 1 year of discovery of the alleged error. *Estate of Umtuch*, 58 IBIA at 208. Appellant's petition for reopening failed to provide any evidence regarding when Appellant first became aware of Geraldine's involvement in Decedent's death and the alleged error in the probate decision. *See* Petition for Reopening. In her filings with the Board, Appellant contends that she was not aware of Geraldine's involvement in Decedent's death, and thus of any possible error in the probate decision, until she received Decedent's military records in 2011.<sup>5</sup> Opening

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<sup>5</sup> Appellant also submits documentation of her efforts to gather evidence regarding Decedent's death, beginning in December 2011. Opening Br., Exhibit 1. Though the timeline created by Appellant underscores her diligence in pursuing information, her  
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Brief (Br.), Oct. 23, 2013, at 6. Appellant acknowledges that she was present at the October 24, 1979, probate hearing, but contends that “critical information [was] discussed off the record and . . . was not available to me at that time.” Notice of Appeal, May 16, 2013, at 8.<sup>6</sup> Neither of these explanations were presented to the ALJ and we decline to consider them here. *See Estate of Mechance*, 60 IBIA at 251 (declining to consider arguments “raised for the first time on appeal to the Board”).

We have recognized that reopening a probate case is ordinarily not warranted when a significant amount of time has passed since the original probate because, among other considerations, evidence tends to become “less trustworthy” as time passes. *See Estate of George Dragswolf, Jr.*, 30 IBIA 188, 197-98 (1997) (and cases cited therein). Here, the original probate judge was cognizant of the relevant law regarding the effect of homicide on intestate succession. *See* Letter from Probate Judge to Fresno Chief of Police, July 31, 1979 (July 31, 1979 Letter) (AR Tab 4) (explaining that because the cause of death was shown as homicide on the amended death certificate, he needed a copy of the police file “to determine whether or not a member of the decedent’s family might have been responsible for his death”).<sup>7</sup> He received a certified copy of the police report, *see* Letter from Fresno Chief of Police to Probate Judge, Aug. 7, 1979 (AR Tab 4), yet included Geraldine as an heir to her husband’s estate.

Appellant believes that the investigative report of Decedent’s homicide,<sup>8</sup> which included police statements and transcripts of suspect interviews, establishes Geraldine’s “grueling involvement” and “active participation” in Decedent’s death, and urges the Board

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documentation fails to establish the date she first became aware of the alleged error in the Decision. *See id.*

<sup>6</sup> In her appeal to the Board, Appellant also implies that she may have participated in the hearing telephonically. Notice of Appeal at 3 (stating that she was told by her sister “to call in to a phone number regarding the probate of [Decedent’s estate]”).

<sup>7</sup> In support of his request for the police file, the probate judge enclosed “an excerpt from the Montana statutes regarding the effect of homicide on intestate succession.” July 31, 1979 Letter.

<sup>8</sup> On March 1, 2015, Appellant filed with the Board a set of documents related to Decedent’s homicide investigation and which Appellant refers to as the “Investigative Police Report.” *See* Letter from Appellant to Board, Mar. 1, 2015, and attachment. Many of the pages bear a stamp imprint indicating the copy was prepared by the Fresno Police Department for Appellant on May 23, 2013, which was shortly after Appellant filed her Notice of Appeal.

