



INTERIOR BOARD OF INDIAN APPEALS

Estate of George Robert Brave Bull, Sr.

61 IBIA 228 (08/24/2015)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF GEORGE ROBERT) Order Affirming Denial of Rehearing
BRAVE BULL, SR.)
) Docket No. IBIA 15-092
)
) August 24, 2015

Georgette L. Brave Bull (Appellant) appealed to the Board of Indian Appeals (Board) from an Order Denying Rehearing entered on June 12, 2015, by Administrative Law Judge (ALJ) R. S. Chester in the estate of George Robert Brave Bull, Sr. (Decedent).¹ The ALJ denied a petition for rehearing filed by several of Decedent’s surviving children, including Appellant, leaving in place the ALJ’s September 30, 2014, Decision, which approved Decedent’s will executed on October 6, 2013.² In her notice of appeal, Appellant argues that Decedent’s signature on the will was falsified and she provides handwriting samples for the Board to make a comparison.

Upon receipt of the appeal, the Board ordered Appellant to complete service of her notice of appeal on the ALJ and interested parties as required by 43 C.F.R. §§ 4.310(b) and 4.323, and to notify the Board that she had done so.³

In addition, the Board ordered Appellant to show cause (i.e., explain) why the Board should not summarily affirm the ALJ’s denial of rehearing, because Appellant’s notice of

¹ Decedent was a Standing Rock Sioux Indian. The number assigned to the probate of Decedent’s estate in the Department of the Interior’s probate tracking system, ProTrac, is Probate No. P000121234IP.

² In the petition for rehearing, Appellant and her siblings Mary Jamerson, William Brave Bull, and Roberta Batchelor sought rehearing on the grounds that the petitioners could not attend the initial hearing because of work; they would like to present a letter from tribal court; they would like to discuss the lack of a notary’s seal on the will; and Decedent was not married on the date of his death. *See* Order Denying Rehearing at 2. The ALJ considered and rejected each of these arguments as grounds for rehearing. *See id.* at 2-3.

³ Pre-Docketing Notice, Order for Appellant to Serve ALJ and Interested Parties, and Order for Clarification and for Appellant to Show Cause, July 14, 2015, at 1-2 (OSC). It appears that Appellant has completed service.

appeal does not identify any error that the ALJ committed in the Order Denying Rehearing. OSC at 2-3. The Board also advised Appellant that, with respect to her evidence submitted on appeal concerning Decedent's signature on the will, it did not appear that this evidence was presented to the ALJ, and that the Board generally will not consider for the first time on appeal arguments or evidence that could have been, but were not, raised to the probate judge.⁴ *Id.* at 3; *see* 43 C.F.R. § 4.318 (the appeal to the Board "will be limited to those issues that were before the administrative law judge or Indian probate judge upon the petition for rehearing"); *Estate of William Fox*, 60 IBIA 16, 19 (2015) ("Precedent of long standing directs that newly discovered evidence shall be presented [to the probate judge] and will not be considered on an appeal.") (alteration in original) (citation omitted). Accordingly, the Board ordered Appellant to clarify whether she was alleging any error in the Order Denying Rehearing and, if so, to explain why it should not be summarily affirmed. OSC at 3.

In her response to the OSC, Appellant only reiterates that the will was not signed by Decedent, and requests that the Board review and compare the handwriting samples submitted with her notice of appeal. Letter from Appellant to Board, August 13, 2015. Appellant does not allege any error in the Order Denying Rehearing. Nor does she dispute that the handwriting evidence she offers on appeal was never raised to the ALJ.

We summarily affirm the Order Denying Rehearing, because Appellant does not meet her burden to show error in the Order Denying Rehearing, *see Estate of Dominic Orin Stevens, Sr.*, 55 IBIA 53, 62 (2012), and mere disagreement with a probate judge's decision is insufficient to meet an appellant's burden, *see Estate of Edward Teddy Heavyrunner*, 59 IBIA 338, 346 (2015). With respect to Appellant's evidence regarding Decedent's signature, we are not convinced that we should consider it for the first time on appeal. While, in her notice of appeal, Appellant asserts that she "assumed [she] would be called to another hearing . . . and would be able to present documents then," Notice of Appeal, received July 7, 2015, at 1 (unnumbered), this is not a valid excuse for her failure to raise the evidence to the ALJ in the petition for rehearing. *See* 43 C.F.R. § 30.238(b) ("If the petition is based on newly discovered evidence, it *must*: (1) Be accompanied by . . . affidavits . . . stating fully the content of the new evidence; and (2) State the reasons for the failure to discover and present that evidence at the hearings held before the issuance of

⁴ It is undisputed that, to the extent anyone raised an issue regarding Decedent's signature on the will, Mary Jamerson attended the initial hearing by telephone and alleged that the signature is not Decedent's. *See* Order Denying Rehearing at 2. But, once the ALJ explained that a supplemental hearing could be held to take up the issue, and that Mary would have the burden to show that the signature is not Decedent's, Mary decided not to pursue her allegation. *See id.*

the decision.”) (emphasis added). We also note that, in any event, the Board is not an expert on handwriting analysis, and thus would not be in a position to make the evidentiary determination apparently sought by Appellant.

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 June 12, 2015, Order Denying Rehearing.

I concur:

// original signed
Thomas A. Blaser
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge