



INTERIOR BOARD OF INDIAN APPEALS

Estate of Owen Snez

40 IBIA 96 (09/08/2004)

Related Board case:
45 IBIA 28



United States Department of the Interior

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INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF OWEN SNEZ : Order Docketing and Dismissing Appeal
: and Referring Matter to the
: Administrative Law Judge
:
: Docket No. IBIA 04-139
:
: September 8, 2004

On August 26, 2004, the Board of Indian Appeals (Board) received a notice of appeal from Loretta Snez Burnette, through counsel Sampson Martinez, Esq., of Gallup, New Mexico. Appellant seeks review of a decision issued on June 25, 2004, by Administrative Law Judge (ALJ) Patricia McDonald, in the estate of Owen Snez, deceased unallotted Navajo Indian (Tribe Census No. 780U046704; Probate No. NV-780-0149). For the reasons discussed below, the Board docketed this appeal, but dismisses it as premature, and refers the matter to the ALJ for consideration as a petition for rehearing.

The ALJ's June 25, 2004, decision, captioned "Decision on Appeal," was issued in response to an appeal filed with the ALJ from an Order to Determine Heirs and Order to Distribute issued on May 12, 2003, by an attorney decision maker (ADM) in the Bureau of Indian Affairs (BIA). ^{1/} The ALJ's decision stated that it would be final for the Department of the Interior unless an appeal was filed with the Board within 60 days, in accordance with 43 C.F.R. § 4.320. Appellant mailed her notice of appeal to the Board on August 24, 2004, within 60 days from the date of the ALJ's June 25, 2004, decision.

The BIA probate regulations provide an informal process that allows ADMs to issue orders to determine heirs and distribute Indian trust estates in certain cases, subject to a right of

^{1/} "Attorney decision maker" is a term used in the BIA probate regulations to refer to an attorney in the BIA whose functions include reviewing probate packages, determining heirs, and issuing written decisions. See 25 C.F.R. § 15.2.

In the present case, the appeal from the ADM's order to the ALJ was filed by Decedent's four daughters, including Appellant.

appeal to an ALJ. ^{2/} See 25 C.F.R. §§ 15.203–15.405. If an interested party files an appeal from a decision made by a BIA deciding official, which includes ADMs, the matter is referred to an ALJ “in the same manner provided under 43 CFR § 4.210 [Commencement of probate].” 25 C.F.R. § 15.404. The ALJ then conducts a de novo review of the merits of the case, and conducts a hearing as necessary or appropriate. 25 C.F.R. § 15.405; 43 C.F.R. § 4.243. Thus, although the proceedings before the ALJ are in the form of an appeal from an ADM decision, the resulting de novo review, hearing, and ALJ decision are treated no differently under the regulations than if the ALJ were determining heirs and ordering distribution for an estate in the first instance.

Under the probate regulations governing proceedings conducted by ALJs and appeals to the Board, a party must first seek rehearing before the ALJ, before filing an appeal with the Board. ^{3/} Section 4.240(b) of 43 C.F.R. provides that “[t]he [ALJ] decision will not become final and no distribution may be made thereunder until the expiration of the 60 days allowed for the filing of a petition for rehearing by aggrieved parties as provided in § 4.241 [Rehearing].” When the ALJ has decided the petition for rehearing, then an aggrieved party may file an appeal with the Board. See 43 C.F.R. § 4.320(a) (probate orders appealable to the Board are limited to orders on petition for rehearing, petition for reopening, or regarding tribal purchase of interests in decedent’s trust estate). Because the regulations governing probate proceedings conducted by ALJs make no distinction between an original ALJ order to determine heirs and distribute an estate, and an ALJ order to determine heirs and distribute an estate issued in deciding an appeal from an ADM decision, the procedures and requirements for challenging the ALJ’s decision are the same. In both cases, an aggrieved party must first seek rehearing before the ALJ, before being permitted to appeal to the Board.

Applying the above principles to the present case, the Board concludes that the appeal instructions in the ALJ’s June 25, 2004, decision were incorrect in advising Appellant that she could and must file her appeal with the Board. Because Appellant followed the appeal information provided in the ALJ’s decision, and filed her appeal within 60 days from the date

^{2/} The Board uses the term “ALJ” in this decision, with the understanding that the principles apply equally to decisions issued by Indian Probate Judges (IPJs) in appeals from ADM decisions. Although the provisions in the BIA regulations governing appeals from ADM decisions refer to such appeals as made to an “ALJ,” those regulations define “ALJ” in a way that includes IPJs, who are also delegated authority from the Secretary to conduct and decide Indian probate proceedings pursuant to 43 C.F.R. Part 4, Subpart D. See 25 C.F.R. § 15.2; 43 C.F.R. § 4.201 (definition of “OHA deciding official”).

^{3/} The same principle applies to parties seeking to reopen an estate: a petition must first be filed with and decided by an ALJ, before a party may appeal to the Board. See 43 C.F.R. §§ 2.242, 4.320(a).

of that decision, the Board concludes that her appeal should be considered as a timely petition for rehearing, and should be referred to the ALJ for consideration pursuant to 43 C.F.R. § 4.241. ^{4/} Cf. Estate of Daniel Heil Powers, 36 IBIA 137 (2001) (referring an appeal from an ADM decision to the Hearings Division for assignment to an ALJ, to conform to new regulatory procedures).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed, but dismissed as premature. This matter is referred to Administrative Law Judge McDonald, for consideration as a petition for rehearing.

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Colette J. Winston
Administrative Judge

^{4/} The 60-day time period is the same for filing a petition for rehearing from an ALJ order determining heirs, and for filing an appeal with the Board from an ALJ order on a petition for rehearing.