



INTERIOR BOARD OF INDIAN APPEALS

Estate of John Martin Red Bear

41 IBIA 273 (09/30/2005)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF JOHN MARTIN RED BEAR : Order Affirming Decision
:
: Docket No. IBIA 04-6
:
: September 30, 2005

This is an appeal from an August 28, 2003, order denying rehearing by Administrative Law Judge Marcel S. Greenia (ALJ) in the estate of John Martin Red Bear (Decedent), deceased Oglala Sioux Indian, Probate No. IP 001-344-080L. That order let stand the ALJ's June 24, 2002, order dividing Decedent's estate equally between Appellant Elmer Martin Red Bear, who is Decedent's son, and Decedent's daughter, Normaine (Alice) Red Bear. Appellant requests that the case be remanded to allow him to present evidence of "special claims" against Decedent's estate. For the reasons stated below, the Board of Indian Appeals (Board) affirms the ALJ's denial of rehearing.

Background

Decedent died intestate on September 20, 2000, at Hot Springs, South Dakota. The ALJ held a hearing on June 29, 2001, to determine the heirs and settle the trust estate of Decedent. Appellant and his wife attended the hearing.

On June 24, 2002, the ALJ issued an Order Determining Heirs and Decree of Distribution which provided that Decedent's trust property would pass in equal shares to Decedent's two living children, Appellant and Normaine (Alice) Red Bear. The trust estate included real property on the Pine Ridge and Rosebud Reservations in South Dakota and a cash balance in Decedent's Individual Indian Money (IIM) account.

Appellant filed a timely petition for rehearing. ^{1/} Appellant argued that a substantial portion of Decedent's estate consisted of trust land on the Rosebud Indian Reservation that was previously inherited by Decedent from his deceased wife, Lydia White Horse Charging Elk Red Bear, who is also Appellant's mother. Lydia White Horse Charging Elk Red Bear died before Normaine (Alice) Red Bear was born and was not her mother. Appellant argued that a portion of his mother's estate should have descended to him at the time of her death and that such portion should not be deemed a part of Decedent's estate to which Normaine (Alice) Red Bear is an heir. Appellant also objected to the distribution of one-half of Decedent's IIM account to Normaine (Alice) Red Bear on the grounds that Appellant was exclusively responsible for the care and comfort of Decedent and that Normaine (Alice) Red Bear had no contact with Decedent and showed no interest in his welfare and did not justly deserve a share of the IIM account. No responses to the petition were filed.

On August 28, 2003, the ALJ issued an Order Denying Petition for Rehearing. The ALJ noted that Appellant was mistaken that his mother's trust property on the Rosebud Reservation had passed upon her death to his father in its entirety. Rather, pursuant to a May 11, 1951, Order Determining Heirs, each of three of his mother's heirs received a one-third share of the property: Appellant Elmer Martin Red Bear; her other son, Edward D. Charging Elk; and her husband, Decedent. Thus, the ALJ noted that only one-third of his mother's estate, Decedent's share, was probated in this estate.

With respect to Appellant's claim that Normaine (Alice) Red Bear should have received no part of the IIM account, the ALJ found that Appellant failed to submit a claim at the hearing that he was responsible for the care of his father, as required by federal regulations, and

^{1/} The petition was not received by the ALJ until June 2, 2003, long after the 60-day period provided for the filing of a rehearing petition had expired, but the petition was nevertheless deemed timely filed. The delay occurred because Appellant was provided outdated instructions stating that a rehearing petition should be filed with the Superintendent of the Bureau of Indian Affairs (BIA). When Appellant filed his petition as instructed, BIA — unaware of the erroneous instructions — apparently viewed the petition to be a copy provided for its convenience and filed it with the probate file. After Appellant inquired about his petition it was forwarded to the ALJ. In the interim, the assets of Decedent's estate were mistakenly distributed to the heirs. In an order issued October 27, 2003, the Board noted that, despite the premature distribution of Decedent's estate, the Board did not consider the appeal to be moot and that, if Appellant prevailed on appeal, the Board would need to address the issue of the premature distribution. Because the Board affirms the ALJ's order, the premature distribution is harmless error and need not be addressed.

that there was no error in the order distributing the estate. ^{2/} Finding that Appellant presented no new evidence that would change the distribution of the estate, the ALJ denied the petition.

Appellant filed a timely appeal to the Board. Appellant relies on argument set forth in his notice of appeal. No other parties have submitted filings to the Board.

Discussion

Appellant challenges the ALJ's ruling that he and Normaine (Alice) Red Bear inherit an equal share of Decedent's IIM account. Appellant states that he was denied the opportunity to argue that the probate hearing held June 29, 2001, was a mere formality. Appellant contends that he was not advised of his right to submit a special claim, and that Normaine (Alice) Red Bear, who did not attend the hearing, could not and most likely would not have objected to Appellant's claim.

Federal regulations in effect at the time of Decedent's death required that all claims against the estate of a deceased Indian must be filed "prior to the conclusion of the first hearing, and if they are not so filed, they shall be forever barred." 43 C.F.R. § 4.250(a) (2000). This includes claims for care. Id. § 4.250(d).

Appellant does not dispute that he failed to timely file a claim against the estate. Rather, he argues that he was not advised of his right to submit a claim. The record shows that Appellant was given particular notice of the probate hearing. See May 10, 2001, Notice of Hearing; 43 C.F.R. § 4.211 (2000). That notice stated that testimony would be taken and evidence received for the purpose, among other things, of considering creditor claims. It specifically stated that "[f]ailure to appear may result in loss of rights claimed." The hearing notice also specifically identified the regulations at 43 C.F.R. Part 4, which govern probate hearings. It was Appellant's responsibility to familiarize himself with those regulations. See Estate of Jeanette Little Light Adams, 39 IBIA, 32, 39 (2003) (parties to probate proceedings are presumed to have knowledge of the regulations governing those proceedings).

Appellant attended the probate hearing with his wife. At the hearing, Appellant was expressly made aware of the opportunity to make a claim against the estate by the ALJ, who said to Appellant: "No claims have been filed against this estate. Are you aware of any claims that exist?" Transcript (Tr.) at 4. Appellant responded, "As far as I know, there isn't." Tr. at 5. The ALJ also specifically noted that the IIM account was part of the estate, and contained \$1748.38. Id. Appellant had ample opportunity to make a claim against the estate in the proceedings below.

^{2/} This portion of the ALJ's ruling is provided in a Memorandum of Law, also dated Aug. 28, 2003, accompanying the Order Denying Petition for Rehearing.

The Board concludes that the probate proceedings were properly conducted and that the time for Appellant to make a claim against the estate has elapsed. Accordingly, the Board denies Appellant's request that the Board remand for further proceedings.

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 28, 2003, Order Denying Petition for Rehearing.

I concur:

// original signed
Katherine J. Barton
Acting Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge