



INTERIOR BOARD OF INDIAN APPEALS

Estate of Marvin Lee Tissidimit

51 IBIA 211 (04/09/2010)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF MARVIN LEE)
TISSIDIMIT) Order Affirming Denial of
) Rehearing
)
) Docket No. IBIA 10-014
)
) April 9, 2010

The Pocatello Railroad Federal Credit Union (Appellant or Credit Union) appealed to the Board of Indian Appeals (Board) from a Notice of Petition for Rehearing and Order Denying Rehearing (Order Denying Rehearing) entered on October 9, 2009, by Administrative Law Judge (ALJ) Earl J. Waits in the estate of Marvin Lee Tissidimit (Decedent), deceased Shoshone-Bannock Indian, Probate No. P000069962IP. The Credit Union filed a claim seeking an order from the ALJ approving the Credit Union's posthumous payment of funds from Decedent's non-trust personal Credit Union account to the William Walker Monument Company, for a headstone for Decedent's grave. The ALJ concluded that he lacked jurisdiction over the transaction because it involved non-trust funds, over which the Department of the Interior lacks probate jurisdiction.

We affirm the Order Denying Rehearing because Appellant's petition for rehearing expressly disclaimed any intent to seek payment of funds from Decedent's trust estate, and instead only sought the ALJ's approval of its transfer of Decedent's non-trust funds from his Credit Union account to the monument company. The ALJ correctly denied rehearing on the grounds that he lacked jurisdiction over the transaction involving non-trust funds. We decline to consider Appellant's purported clarification on appeal, that it is in fact seeking payment from Decedent's trust funds, because that argument was not presented to the ALJ in the petition for rehearing. But even if we considered that argument as properly raised, we would nevertheless summarily affirm the Order Denying Rehearing on other grounds, because the Department's probate regulations provide that a decedent's trust funds "on hand or accrued at the date of death" may be used to pay claims, 43 C.F.R. § 30.146, and the ALJ found that there were no funds in, or due and payable to, Decedent's Individual Indian Money (IIM) account on the date of death.

Background

I. The Department's Probate Jurisdiction

The Department of the Interior (Department) only has probate jurisdiction over trust or restricted property of an Indian decedent. *See* 43 C.F.R. § 30.102(a); *see also id.* § 30.100 (“*Estate* means the trust or restricted land and trust personalty owned by the decedent at the time of death.”). The Department does not have jurisdiction over non-trust real or personal property, even if owned by an Indian. *See Estate of Pansy Jeanette (Sparkman) Oyler*, 16 IBIA 45, 47 (1988).

As a practical matter, what this means is that an Indian decedent may have two separate and distinct “estates” for probate purposes: (1) a “trust” estate, consisting of real and personal property held in trust or restricted against alienation by the United States, which generally is subject to the probate jurisdiction of the Department; and (2) a “non-trust” estate, consisting of real and personal property owned by the Indian decedent, which is not subject to Federal trusteeship or restrictions and is not subject to Federal probate jurisdiction, but which instead is subject to the probate jurisdiction of a tribal or state court. Even if an Indian decedent’s Last Will and Testament provides for the disposition of both trust and non-trust property, the jurisdiction of the Department extends only to probating the will for the disposition of the trust property. *See Estates of Edwin (Edward) J. Scarborough and Nora Scarborough Brignone*, 11 IBIA 179, 181 n.5 (1983).

II. The Credit Union’s Claim, Petition for Rehearing, and Appeal

The Credit Union filed a timely claim with the Bureau of Indian Affairs (BIA) against Decedent’s estate. As evidenced by the claim, the Credit Union had issued two checks, each totaling \$3700, “To the Order of: WILLIAM WALKER COMPANY FOR MARVIN TISSIDIMIT FROM CHRISTINE POOENGRAH.”¹ The money was drawn from Decedent’s non-trust account with the Credit Union. As explained by the BIA Agency Superintendent, who transmitted the claim to the ALJ, the Shoshone-Bannock Tribal Court apparently had ordered the Credit Union to reimburse Decedent’s account for the withdrawn funds, which apparently precipitated the Credit Union’s claim against Decedent’s trust estate. *See* Memorandum from Superintendent to Chief Administrative

¹ Christine Pooengrah is a half-sister of Decedent, and had been granted emergency temporary custody and guardianship over Decedent by the tribal court after Decedent suffered a heart attack on May 30, 2008, and became incapacitated. Decedent died on June 12, 2008, three days after the tribal court order was issued.

Law Judge, Apr. 16, 2009. In its claim, the Credit Union stated that it “claims a priority administrative expense claim for funeral and other expenses delivered to [Decedent’s] heirs at their special instance and request.” Affidavit of Charles Johnson in Support of Claim, Feb. 11, 2009, at 1. The Credit Union asserted that “credit for the amount of this claim was extended to [D]ecedent from a Credit Union account of the [D]ecedent that was ordered to be repaid by the Credit Union to the Estate.” *Id.* The claim also stated that the Credit Union had made a claim for the same debt against Decedent’s non-trust assets in tribal court.

The ALJ denied Appellant’s claim, construing it as a claim for funds paid out of Decedent’s personal, non-trust bank account. As understood by the ALJ, “[t]his transaction involved wholly non-trust property in Decedent’s private credit union account, over which the Secretary has no jurisdiction. As the Secretary has no jurisdiction over non-trust property, I make no determination as to this claim.” Decision, July 30, 2009, at 4. The ALJ did allow two claims filed by the Shoshone-Bannock Credit Department, which were based upon promissory notes and assignments of income from Decedent’s trust real property.²

Appellant sought rehearing. Appellant argued that its claim should be treated as a priority claim and be paid pursuant to Decedent’s will.³ Appellant’s petition for rehearing stated that “[t]he Court *merely needed to approve this transfer and not actually pay the money because the Credit Union had already done so from the [D]ecedent’s funds.*” Written Petition for Rehearing, Aug. 17, 2009 (emphasis added).

The ALJ denied rehearing, again concluding that he lacked jurisdiction because “[t]he transaction that gave rise to this claim not only occurred after the death of Decedent, but it also involved non-trust assets over which I have no jurisdiction.” Order Denying Rehearing at 3. The ALJ stated that “[a]ny claim or action arising from the payments by

² The ALJ found that “[t]here was no money in or due and payable to Decedent’s [IIM] account as of the date of death.” Decision at 1. The ALJ also found, however, that by the date of the hearing, there were sufficient funds in Decedent’s IIM account to pay the Shoshone-Bannock Credit Department’s claims, for which there were BIA-approved assignments of income from Decedent’s trust real property. *Id.* at 3.

³ Decedent’s will, which the ALJ approved, provided that “FIRST.-I desire that all my legal debts be paid, including the expenses of my last illness, funeral, and burial.” Last Will and Testament of Marvin Tissidimit, at 1.

the Credit Union must be resolved in a forum with jurisdiction over the assets and the person or persons to whom the payments were issued.” *Id.* at 2-3.

The Credit Union appealed to the Board. In its notice of appeal, the Credit Union reasserted its position that “[t]he Court *merely needed to approve this transfer and not actually pay the money because the Credit Union had already done so from the [D]ecedent’s funds.*” Notice of Appeal at 2 (emphasis added).

Upon receipt of the appeal, the Board issued an order for Appellant to show cause why the ALJ’s Order Denying Rehearing should not be summarily affirmed because it appeared that the subject of Appellant’s claim, and the relief sought, involved only non-trust assets, over which the Department lacks jurisdiction. As described in the Board’s order,

[i]t appears from Appellant’s notice of appeal, and from its petition for rehearing, that the Appellant did not assert any claim *against* Decedent’s Indian *trust* estate — e.g., by seeking payment of monies from Decedent’s Individual Indian Money account or other trust personalty. . . . Instead, the Credit Union apparently paid money out of Decedent’s non-trust personal banking account, and now seeks to have that payment declared proper pursuant to the terms of Decedent’s will. The ALJ concluded that he lacked jurisdiction to consider such a claim or request. . . . Based on a review of the Credit Union’s petition for rehearing and its notice of appeal, it appears to the Board that the ALJ is correct.

Pre-Docketing Notice and Order to Show Cause, Nov. 16, 2009, at 3.

In response to the Board’s show cause order, Appellant contends that the Department has jurisdiction to administer its claim “as a **claim against [D]ecedent’s Indian Trust Estate by seeking payment of money from the [D]ecedent’s [IIM] or other trust personalty.**” Response to Order to Show Cause at 3. Appellant argues that the Department has jurisdiction to determine that its claim is valid, and should “order reimbursement to [Appellant] for the funds paid for the headstone . . . so that these funds may then be paid over to the other heirs for distribution in his estate. . . . This money would . . . be paid back to the estate in the Tribal Court case.” *Id.* Appellant reiterates its arguments that its claim should be treated as a priority claim, and that its claim is analogous to the two claims by the Shoshone-Bannock Credit Department, which the ALJ allowed.

Discussion

The scope of review for the Board in an appeal is limited to those issues that were before the ALJ. *See* 43 C.F.R. § 4.318. As a general rule, the Board does not consider new arguments raised for the first time on appeal. *See Estate of Alice Grace Demontigny*, 50 IBIA 174, 176 (2009).

We affirm the ALJ's Order Denying Rehearing because he correctly concluded, based upon the grounds asserted by Appellant in its petition for rehearing, that he lacked jurisdiction over Appellant's claim. In the proceedings before the ALJ, and in its notice of appeal, Appellant did not characterize its claim as seeking payment from Decedent's trust funds.⁴ Instead, it is clear that Appellant was attempting to invoke the ALJ's authority only to "approve" Appellant's prior dispersal of non-trust monies from Decedent's Credit Union account, in an apparent attempt to shield Appellant from an assertion in the tribal court proceedings that the disbursement was improper.

On appeal, faced with the Board's order to show cause, Appellant seeks to recharacterize its claim as one seeking payment from Decedent's trust funds. But we see no reason to expand the scope of review to consider an argument not presented to the ALJ in the petition for rehearing, particularly where the Credit Union had a full opportunity to characterize or clarify the nature of its claim to the ALJ, first in the initial claim itself and then in the petition for rehearing. The ALJ reasonably construed Appellant's claim as pertaining solely to the use and disposition of Decedent's non-trust assets, and he correctly concluded that he lacked jurisdiction to grant the Credit Union's request to "merely . . . approve this [non-trust money] transfer and not actually pay the money." *See* Petition for Rehearing.

Even if we were to conclude that the ALJ should have considered Appellant's claim as seeking payment of funds from Decedent's IIM account, we would nevertheless summarily affirm the ALJ on other grounds. The Department's probate regulations provide that intangible trust personalty of a decedent, including IIM funds, "on hand or accrued at the date of death may be used for the payment of claims." 43 C.F.R. § 30.146. The ALJ

⁴ The initial claim is confusing. Although it might have been construed as seeking payment from Decedent's IIM account in the alternative if relief was not obtained in tribal court, *but cf.* 43 C.F.R. § 30.142 (judge will not authorize payment of a claim from trust property if judge determines that the decedent's non-trust estate was or is available to pay the claim), the lack of clarity in the claim makes it understandable that the ALJ interpreted it as addressing only a matter involving non-trust assets.

found that there were no such funds in or due and payable to Decedent's IIM account on the date of death. Thus, regardless of whether an unsecured claim for funeral expenses might be considered to have priority under the terms of Decedent's will, under section 30.146, there were no trust funds available to pay Appellant's claim.⁵

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 Order Denying Rehearing.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Sara B. Greenberg
Administrative Judge*

*Interior Board of Land Appeals, sitting by designation.

⁵ We also note that a request for assistance for funeral arrangements is governed by 25 C.F.R. § 15.301, which allows requests by those responsible for making funeral arrangements and provides that allowed payments will be made directly to the providers of the services. *See* 25 C.F.R. §§ 15.301(a)(1) and (d). Neither of these criteria would apply to Appellant, and it is unclear, given the factual circumstances under which the Credit Union released funds from Decedent's account, on what grounds the Credit Union would even have standing to assert a claim against Decedent's estate.