



INTERIOR BOARD OF INDIAN APPEALS

Estate of William A. Hamilton, Sr.

52 IBIA 221 (11/04/2010)

Denying Reconsideration of:
52 IBIA 161

in Decedent's estate.³ Appellants also dispute the Board's statement in its OSC that Appellants apparently had not sought rehearing with the ALJ from his Order Approving Will. Appellants assert that they had filed a petition with the state court to vacate an earlier order of that court, which was granted by the state court on September 20, 2010. The state court also added Appellants as heirs to Decedent's estate.⁴

We deny Appellants' request for reconsideration because Appellants have not shown that extraordinary circumstances exist for granting their request. *See* 43 C.F.R. § 4.315(a) (reconsideration will be granted only in extraordinary circumstances). Appellants failed to respond to the Board's OSC, even though it specifically advised them that if they failed to respond, their appeal might be summarily dismissed without further notice. If Appellants believed that related proceedings in state court constituted grounds for receiving an extension of time to respond to the OSC, it was incumbent upon them to ask for such an extension, or at least submit some response to the Board. Appellants' belated excuse for their failure to submit any response to the Board, after receiving the OSC, does not constitute extraordinary circumstances warranting reconsideration.

Moreover, even if we were to excuse Appellants' failure to respond to the OSC, we would nevertheless deny reconsideration because Appellants' petition for reconsideration still does not address the substance of the OSC — why the appeal was not outside the scope of the Modification Order and thus outside the scope of the Board's review. *See* 43 C.F.R. § 4.318. As noted in the OSC, Appellants' appeal appears to challenge the ALJ's Order Approving Will, which apparently became final when no petitions for rehearing were filed.⁵

³ The Department of the Interior (Department) does not probate “[r]estricted interests derived from allotments made to Osage Indians in Oklahoma . . . and Osage headright interests owned by Osage decedents,” but the Department does probate an Osage decedent's interest in trust land or a restricted interest in land derived from an individual Indian who was a member of a tribe other than the Osage Nation or the Five Civilized Tribes. *See* 43 C.F.R. § 30.102; *see also* 43 C.F.R. 4.200 (2003).

⁴ In the state court proceedings, the court vacated a 2007 order approving a settlement agreement that apparently had been negotiated and approved without notice to and the participation of Appellants.

⁵ Appellants take issue with the Board's statement in the OSC that “[a]pparently no petitions for rehearing were filed with the ALJ from his Order Approving Will,” OSC at 2, arguing that they had sought to vacate the state court's earlier probate order. But the

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The Order Approving Will was not reopened in the Modification Order, which was limited to adding property to Decedent's estate and distributing it pursuant to the terms of the final Order Approving Will. Thus, even if we were to excuse Appellants' failure to timely respond to the OSC and reinstate this appeal, we would still find that Appellants have not shown why their appeal is not outside the scope of the ALJ's Modification Order. *Cf. Estate of Caroline Davis*, 51 IBIA 101 (2010) (docketing and dismissing appeals; when a probate judge's modification order simply adds property to a Decedent's estate in order that it be distributed pursuant to the terms of a prior, and final, probate decision determining heirs or approving a will, the original probate decision is not within the scope of an appeal to the Board from the modification order); *Estate of Irma Ross*, 51 IBIA 21 (2009) (same).

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 denies Appellants' petition for reconsideration.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

⁵(...continued)
proceedings in state court are entirely separate and independent from these proceedings, which are before a Federal agency. Thus, Appellants' petition to the state court to vacate the state court's prior probate order did not constitute a petition *with the ALJ* seeking rehearing of the *ALJ's* Order Approving Will. Nor does the Board have knowledge of state court proceedings unless informed by the parties. Although we find no grounds to grant Appellants' request for reconsideration of our dismissal of their appeal, we express no opinion on whether Appellants have grounds to support reopening Decedent's non-Osage estate (i.e., to reopen the ALJ's Order Approving Will). Any such petition must first be filed with the ALJ and acted upon by the ALJ. *See* 43 C.F.R. § 30.242 (May a closed probate case be reopened?).