



INTERIOR BOARD OF INDIAN APPEALS

Estate of Wilmore Whitebead

54 IBIA 292 (03/29/2012)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ESTATE OF WILMORE WHITEBEAD ) Order Affirming Decision  
)  
) Docket No. IBIA 10-053  
)  
) March 29, 2012

We affirm the Order Dismissing Petition for Rehearing, entered January 11, 2010, by Administrative Law Judge Richard L. Reeh (ALJ) in the estate of Wilmore Whitebead (Decedent), deceased Comanche, Probate No. P000069629IP. The ALJ's decision left in place his Order Determining Heirs and Decree of Distribution, entered December 9, 2009, in which the ALJ determined that Anice Louise Hamby Seuffert (Seuffert) is Decedent's daughter, and ordered the distribution of Decedent's trust estate accordingly. Randal S. Whitebead (Appellant), Decedent's son, appealed to the Board of Indian Appeals (Board), denying that the evidence is sufficient to show that Seuffert is his father's daughter and seeking a second hearing. We affirm because there is no showing that the ALJ erred in dismissing the petition.

## Background

Decedent was born July 10, 1941, in Lawton, Oklahoma; he died intestate on May 12, 2008, also in Oklahoma. He was single at the time of his death, and it is undisputed that he was survived by Appellant. What is disputed is whether Decedent also was survived by a daughter, Seuffert.

These proceedings initially were assigned to a Master, Leah Harjo Ware (Master), who conducted a hearing on the record on June 16, 2009. Both Appellant and Seuffert appeared and testified.<sup>1</sup> At the hearing, Seuffert presented an affidavit of paternity signed by Decedent on November 18, 1994, and testified that Decedent had "always been in [her] life." Transcript, June 16, 2009, at 5. Seuffert also testified that her mother had told her that "the only way that she could keep me" was if Bill Hamby was on the birth certificate as

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<sup>1</sup> Appellant appeared by telephone.

Seuffert's father. *Id.* at 10. After the hearing, Seuffert provided a copy of her birth certificate, which lists Hamby as her father. Following the hearing, the Master prepared a recommended decision for the ALJ's consideration, in which she recommended finding Seuffert to be Decedent's daughter, and distributed the recommended decision to the parties for comments or objections. Appellant timely submitted objections in which he argued that Seuffert had not presented "official or scientific proof" of her paternity, that in the past Seuffert's mother had denied that Decedent was Seuffert's father, that Seuffert has never used the Whitebead name, and that her birth certificate does not support her claim that Decedent is her father.

After reviewing the record and considering Appellant's arguments, the ALJ concluded that Seuffert is Decedent's daughter. In support of his conclusion, the ALJ cited the paternity affidavit as sufficient evidence to refute Appellant's allegation that there was "no proof" of paternity. The ALJ held that both Seuffert and Appellant were entitled to inherit Decedent's trust interests and ordered the distribution of Decedent's estate pursuant to the American Indian Probate Reform Act. *See* 25 U.S.C. § 2206. The ALJ ordered the distribution of Decedent's trust funds in equal shares to Seuffert and Appellant along with those trust real property interests owned by Decedent that constituted five percent or more of the entire parcel; those trust real property interests in which Decedent owned less than a five percent interest were ordered to be distributed only to Seuffert as Decedent's eldest child. *See* 25 U.S.C. § 2206(a)(2)(D).

Appellant sought rehearing, and argued that DNA testing should be ordered and that he should have the opportunity to appear in person and with counsel to question Seuffert. The ALJ considered the petition, but dismissed it because Appellant failed to identify any new evidence for his consideration. The ALJ explained that he lacked authority to order DNA testing, and that Appellant had had the opportunity at the hearing before the Master to cross-examine Seuffert. This appeal followed, and we affirm.

### **Discussion**

Appellant argues that he is entitled to a new hearing to challenge Seuffert's paternity, but cites no law in support of his request nor does he present any evidence that would cast doubt on Seuffert's paternity. To the extent that he raises challenges to the authenticity of the evidence presented by Seuffert, these arguments are too late: They were not raised before the ALJ nor do they show that the ALJ's decisions were manifestly unjust or wrong. Therefore, we decline to consider them and we affirm the ALJ's decision dismissing Appellant's petition.

Unless manifest error or injustice is evident, the Board's jurisdiction is limited to those issues first presented to the ALJ in the petition for rehearing. *See* 43 C.F.R. § 4.318; *Estate of John Squally Kalama*, 49 IBIA 201, 204-05 (2009). It is Appellant's burden to show, on appeal, that the ALJ erred in his decision on Appellant's petition for rehearing. *Kalama*, 49 IBIA at 204.

Appellant argues to the Board that a new hearing should be held at which he can appear in person with counsel and at which he can cross-examine Seuffert. He cites no authority for holding a second hearing. And Appellant ignores the fact that a hearing was held, one at which *he* chose to appear by telephone and at which he could have, but did not, cross-examine Seuffert. Moreover, in seeking rehearing, he did not present any new evidence to the ALJ and offered no arguments that would have warranted rehearing or a supplemental hearing. And on appeal to the Board, he does not present any evidence, let alone evidence that casts doubt on the ALJ's conclusion that Seuffert is Decedent's daughter.

Substantively, Appellant challenges the paternity affidavit executed by Decedent, arguing that anything less than an original should be rejected. Appellant failed to raise this argument before the ALJ and, even if he had, fails to assert any basis for the Board to reject a photocopy of the affidavit. Appellant also asserts that there is no evidence that the information provided in the paternity affidavit was sworn testimony.<sup>2</sup> Again, this argument was not previously raised, nor does Appellant present any legal basis for the Board to reject a paternity affidavit even if it were an unsworn statement. *See* 43 C.F.R. § 30.227(d) (judge has discretion to accept a copy of a document into evidence or require production of the original). In addition, to the extent that Appellant objects to a written statement provided by Seuffert's mother, this argument, too, is offered too late.<sup>3</sup> In any event, the ALJ did not rely on any document other than the paternity affidavit in finding Seuffert to be Decedent's daughter and eligible to inherit from him. We decline to consider the substantive arguments raised by Appellant, and thus affirm the ALJ's dismissal of the petition for rehearing.

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<sup>2</sup> The paternity affidavit recites that Decedent, "being duly sworn[,] deposes and says that he is the father" of Seuffert. Appellant does not explain his contention that the information in the paternity affidavit was unsworn.

<sup>3</sup> The record contains a handwritten letter from Seuffert's mother stating that Decedent is Seuffert's father.

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 January 11, 2010, Order Dismissing Petition for Rehearing.

I concur:

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// original signed  
Debora G. Luther  
Administrative Judge

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge