

INTERIOR BOARD OF LAND APPEALS

Arlin D. Walkup

137 IBLA 259 (December 31, 1996)

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ARLIN D. WALKUP

IBLA 94-494

Decided December 31, 1996

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring nine lode mining claims abandoned and void. AMC 11401 and AMC 101679 through AMC 101684.

Affirmed.

1. Mining Claims: Abandonment–Mining Claims: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold–Mining Claims: Rental or Claim Maintenance Fees: Generally–Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

Where a claimant timely filed a certification of exemption from the payment of rental fees for the 1993 assessment year covering nine mining claims, but failed to file an affidavit of assessment work for the 1993 assessment year with BLM on or before Dec. 30, 1993, as required by sec. 314 of FLPMA, the claims are properly declared abandoned and void.

APPEARANCES: Arlin D. Walkup, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Arlin D. Walkup has appealed from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated April 19, 1994, declaring the Gold Spoon #4 lode mining claim (AMC 11401) and the Billie Boone #15, #17A, #19A, and #20A through #24A lode mining claims (AMC 101677 through AMC 101684) abandoned and void because an affidavit of assessment work for the 1993 assessment year was not timely filed with BLM.

On August 25, 1993, documents were filed with BLM to transfer ownership of the subject claims to Walkup. On the same day, BLM also received a "Certificate of Exemption from Payment of Rental Fee" covering the nine claims for both the 1993 and 1994 assessment years, in compliance with the provisions of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), P.L. 102-381, 106 Stat. 1374 (1992).

In essence, that Act required the payment, on or before August 31, 1993, of a \$100 rental fee, in lieu of performance of the assessment work requirements of the Mining Law of 1872 (see 30 U.S.C. § 28 (1994)), for each mining claim, mill or tunnel site for both the 1993 and 1994 assessment years. The Act also provided for a waiver of the rental fee for those who could qualify for a small miner exemption under conditions established in the legislation. 106 Stat. 1378-1379. If, however, a claimant obtained a small miner exemption, he or she was required to certify the performance of the assessment work by August 31, 1993, and to both perform the assessment work and meet the filing requirements of section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) and (c) (1994).

In his certificate of exemption, Walkup certified the performance of assessment work as required by the Act. The record indicates, however, that he failed to provide BLM with a copy of the affidavit of assessment work performed on the claims on or before December 30, 1993, as required by section 314(a) of FLPMA. For this reason, BLM declared the subject claims abandoned and void.

In his statement of reasons, Walkup explains that he acquired these claims on August 23, 1993, and was unaware of the necessity of filing a copy of the affidavit of labor for the 1993 assessment year with BLM. Appellant asserts that the necessary assessment work was, in fact, performed by the previous owner and, in effect, seeks to avoid having his claims declared abandoned and void, arguing that he certainly did not intend to abandon these claims.

[1] Having elected to obtain a waiver from the \$100 rental fee, however, Walkup was required, under the express terms of the Act, to comply with the annual filing requirements of section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1994). See Lee Jesse Peterson, 133 IBLA 381 (1995). This he did not do. It is well settled that failure to comply with the filing requirements established by section 314(a) gives rise to a conclusive presumption of abandonment of the claim. See section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1994).

While appellant contends that he was unaware of the necessity for submitting a copy of the affidavit of annual assessment work, lack of actual knowledge of the filing requirements provides no basis for excusing a failure to comply with the statutory mandate, since all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Lester W. Pullen, 131 IBLA 271 (1994); Thomas L. Sawyer, 114 IBLA 135, 139 (1990); Magness Petroleum Corp., 113 IBLA 214, 217 (1990). Moreover, the Supreme Court has upheld the constitutionality of section 314 of FLPMA, concluding that a mining claim for which timely filings are not made is extinguished by operation of law notwithstanding the claimant's subjective intent to maintain the claim. United States v. Locke, 471 U.S. 84, 97 (1985). Thus, section 314 of FLPMA is self-operative, and a claim must be deemed abandoned when an annual filing

is not timely received. Ptarmigan Co., 91 IBLA 113, 118 (1986), aff'd, Bolt v. United States, 994 F.2d 603 (9th Cir. 1991).

As Congress did not provide for waiver of the section 314 requirements, the Board has consistently held that the Department is without authority to excuse lack of compliance, to extend the time for compliance, or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 196, 88 I.D. 369, 372 (1981). In short, since appellant admittedly failed to comply with the filing requirements of section 314(a), this Board has no choice but to affirm the determination of the State Office that the subject claims are conclusively deemed abandoned and void.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

I concur.

Bruce R. Harris
Deputy Chief Administrative Judge