

INTERIOR BOARD OF LAND APPEALS

Bart Cannon

138 IBLA 194 (February 20, 1997)

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BART CANNON

IBLA 94! 277

Decided February 20, 1997

Appeal from a decision of the California State Office, Bureau of Land Management, declaring the Cryo! Genie lode mining claim abandoned and void.
CAMC 88349.

Decision affirmed.

1. Mining Claims: Abandonment! ! Mining Claims: Rental or Claim Maintenance Fees: Generally

"Filed" is defined in 43 CFR 3833.0! 5(m) (1993) to mean "being received and dated stamped in the proper BLM office." Although that regulation specified a 15! day grace period for the filing of affidavits of assessment work and notices of intention to hold mailed to the proper BLM office in an envelope clearly postmarked by the United States Postal Service within the period prescribed by law, it expressly excluded its application to rental fee and exemption certificate filings. No grace period is allowed to extend their filing time, and an application for a small miner exemption mailed prior to the due date but received after Aug. 31, 1993, is untimely filed and the mining claim for which it was submitted and for which no rental fees were paid is abandoned and void by operation of law.

APPEARANCES: Bart Cannon, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Bart Cannon has appealed from a December 23, 1993, decision of the California State Office, Bureau of Land Management (BLM), declaring the Cryo! Genie lode mining claim (CAMC 88349) abandoned and void because he failed to either pay a \$100 claim rental fee or file an application of certification of exemption from payment of rental fees (small miner exemption) for the 1993 and 1994 assessment years, on or before August 31, 1993, as required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Appropriations Act), P.L. 102! 381, 106 Stat. 1378! 79 (1992), and its implementing regulations (43 CFR 3833.1! 5, 3833.1! 6, and 3833.1! 7 (1993)).

In its decision, BLM informed appellant that its records failed to show that he had timely paid on or before August 31, 1993, \$100 per claim rental fee for the 1993 and 1994 assessment years (total \$200), or filed an application of certification of exemption from payment of rental fees. The decision advised that an application for certification of exemption from payment of rental fees was received on September 2, 1993. BLM noted that, while 43 CFR 3833.0! 5(m) (1993) defined "filed" to include a mailing posted by the due date and received within 15 days, it advised that the 15-day period "does not" (emphasis in original) apply to filings made pursuant to 43 CFR 3833.1! 5 or 3833.1! 7 (1993), and that pursuant to 43 CFR 3833.0! 5(o)(2) (1993) all filings required under the Appropriations Act were required to be made by August 31, 1993.

A notice of appeal and a brief statement of reasons were filed on January 20, 1994. Subsequently, on December 30, 1994, in conjunction with another appeal pending before the Board appellant filed additional reasons challenging the BLM decision. ^{1/} The arguments contained in both statements share a common theme. Appellant complains that he did not know that the 15-day grace period did not apply to the new filings, arguing that BLM failed to circulate accurate information on the new mining regulations to mining claimants and was negligent in failing to provide him with personal notice of the new filing requirements.

The Appropriations Act, enacted on October 5, 1992, provided, in pertinent part, that:

[F]or each unpatented mining claim, mill or tunnel site on [F]ederally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28! 28e), and the filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993[,] in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993[.]

106 Stat. 1378 (1992). The Act also contained an identical provision establishing rental fees for the following assessment year ending at noon on September 1, 1994, which required payment of an additional \$100 rental fee for each claim on or before August 31, 1993. 106 Stat. 1378! 79 (1992). Implementing Departmental regulations provided, in pertinent part, as follows:

^{1/} The second appeal, docket number IBLA 94! 493, challenges a decision declaring other mining claims abandoned and void issued by the BLM Oregon State Office.

Mining claim or site located on or before October 5, 1992. A non-refundable rental fee of \$100.00 for each mining claim, mill site, or tunnel site, shall be paid on or before August 31, 1993, for each of the assessment years beginning on September 1, 1992, and September 1, 1993, or a combined rental fee of \$200.

43 CFR 3833.1! 5(b) (1993).

The only exception provided from this rental fee requirement was the "small miner" exemption, available to claimants holding 10 or fewer claims on Federal lands, who also satisfied the other requirements of the statute (106 Stat. 1378, 1378! 79 (1992)) and its implementing regulations (43 CFR 3833.1! 6 and 3833.1-7 (1993)). Ronald E. Milar, 133 IBLA 214, 217 (1995). Under those regulations, in order to obtain an exemption, a claimant must first have submitted, on or before August 31, 1993, a certificate of exemption as to each claim and each assessment year for which he sought an exemption. 43 CFR 3833.1! 7(b) and (d) (1993).

Finally, the Appropriations Act provided that "failure to make the annual payment of the claim rental fee as required by th[e] Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant." 106 Stat. 1379 (1992); see also 43 CFR 3833.4(a)(2) (1993). Thus, when a claimant failed to properly obtain a small miner exemption from the rental fee requirement, the failure to pay those fees in accordance with the Appropriations Act necessarily resulted in a conclusive presumption of abandonment. Chester Wittwer, 136 IBLA 96, 99 (1996), and cases cited therein.

Appellant does not contend that he paid the per claim rental fee. He mailed an application for a small miner exemption from Seattle, Washington, on August 27, 1993, via United States Postal Service 2-day priority mail, to BLM in Sacramento, California. BLM determined that his application for a small miner exemption was untimely filed because it was received on September 2, 1993.

[1] The applicable regulation, 43 CFR 3833.0! 5(m) (1993), provided in part:

File or filed means being received and date stamped by the proper BLM office. For the purposes of complying with § 3833.2 [of 43 CFR], a filing is timely if the required affidavit of assessment work or notice of intent to hold is received within the time period prescribed by law, or if mailed to the proper BLM office, is in an envelope clearly postmarked by the United States Postal Service within the period prescribed by the law and received by the proper BLM office within 15 calendar days subsequent to such period. This 15 day period does not apply to filings made pursuant to §§ 3833.1! 2, 3833.1! 5 [rental fees], or 3833.1! 7 [filing requirements for rental fee exemptions]. [Emphasis in original.]

In addressing the fact that his application for a small miner exemption was date stamped by BLM on September 2, 1993, appellant states that he finds it "not believable" that it would take 6 days for his application to travel from Seattle to Sacramento. However, no other explanation appears in or is suggested by the record. Appellant, having chosen the means to ensure delivery, has to suffer the consequences where his messenger, the U.S. Postal Service, delivers it untimely. ^{2/}

Under the applicable regulation, no grace period for the filing of an application for a small miner exemption is provided, and thus the Cryo! Genie lode mining claim was extinguished by operation of law when neither the claim rental fees nor certifications of exemption from payment of rental fees were received by BLM on or before August 31, 1993. Nannie Edwards, 130 IBLA 59, 60 (1994).

Although appellant claims that BLM circulated inaccurate information concerning the rental fee regulation, no proof has been offered by appellant to support this claim. Reliance on incomplete oral information from BLM, we have held, will not relieve or excuse appellant from complying with clear statutory or regulatory requirements. See 43 CFR 1810.3; Jesse L. Cleary, 131 IBLA 296, 297 (1994).

Notice of the requirement of the Act to pay rental fees was published in the Federal Register on November 16, 1992 (57 FR 54102). Proposed rules were published on March 5, 1993 (58 FR 38186) and final rules, including the definition of "file" or "filed," 43 CFR 3833.0! 5(m) (1993), were published on July 15, 1993, in the Federal Register. Those who deal with the Government are presumed to know the contents of Acts of Congress and duly promulgated regulations published in the Federal Register. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384-85 (1947); William Jenkins, 131 IBLA 166, 168 (1994). BLM is under no duty to send appellant personal notification of an enactment of new laws and regulations. William Jenkins, *supra*; Dee W. Alexandra Estate, 131 IBLA 39 (1994); Lee H. and Goldie E. Rice, 128 IBLA 137, 141 (1994).

^{2/} In section 10101 of the Omnibus Budget Reconciliation Act of 1993, 30 U.S.C. § 28f (1994), Congress required the filing of a \$100 maintenance fee for all unpatented mining claims on or before Aug. 31 of each year from 1994 through 1998. It also allowed for the filing of certificates for exemption from the requirement in certain circumstances. In regulations promulgated to implement that Act, the Department revised 43 CFR 3833.0! 5(m) (1993) to extend the 15! day grace period to maintenance fees and certificates for exemption filed under the 1993 Act. The revised regulations, however, are not applicable to filings required under the Appropriations Act, and no retroactive application of revised 43 CFR 3833.0! 5(m) (1993) to filings required under the Appropriations Act is permissible. Kathleen K. Rawlings, 137 IBLA 368, 373 (1997).

Accordingly, 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.

Gail M. Frazier
Administrative Judge

I concur.

T. Britt Price
Administrative Judge