

INTERIOR BOARD OF LAND APPEALS

Jim Wright

138 IBLA 297 (February 28, 1997)

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JIM WRIGHT

IBLA 94-609

Decided February 28, 1997

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring mining claims abandoned and void. NMC 78163 - NMC 78172.

Affirmed.

1. Mining Claims: Abandonment–Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

An applicant for a small miner exemption from payment of rental fees under the Act of Oct. 5, 1992, must file a certified statement by Aug. 31, 1993, for each of the assessment years (ending Sept. 1, 1993, and Sept. 1, 1994) for which the exemption is claimed. When the applicant fails to pay the rental fee for either of the assessment years and the record indicates no certification of exemption from rental fees was filed by the Aug. 31 deadline for those assessment years, the claims are properly deemed abandoned and void.

APPEARANCES: Jim Wright, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Jim Wright has appealed from a May 20, 1994, decision of the Nevada State Office, Bureau of Land Management (BLM), declaring mining claims NMC 78163 through NMC 78172 abandoned and void. The basis for the BLM decision was the failure to either pay annual rental fees or submit a qualifying certification of exemption from payment by August 31, 1993.

BLM's decision declared the claims abandoned and void because the requirements of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act of October 5, 1992), P.L. 102-381, 106 Stat. 1374, 1378-79 (1992), had not been met. BLM explained that, under the Act of October 5, 1992, in order to maintain a mining claim, claimants had to either pay rental fees for each claim or submit a certification of exemption from payment of rental fees (small miner exemption) on or before August 31, 1993, for both the 1993 and 1994 assessment years. BLM did not receive any rental fees for Wright's claims or certifications of exemption on or before August 31, 1993.

The decision in this appeal is controlled by provisions of the statute cited by BLM. The Act of October 5, 1992, provides in part that

for each unpatented mining claim, mill or tunnel site on federally 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. The Act of October 5, 1992, 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.

[1] The only exception provided from this rental requirement was the so-called small miner exemption, available to claimants holding 10 or fewer claims on Federal lands who meet all the conditions set forth in 43 CFR 3833.1-6(a) (1993), 1/ which essentially tracks the statutory criteria. James L. Patterson, 137 IBLA 156 (1996); William B. Wray, 129 IBLA 173 (1994). The filing deadline for the certification or payment of the rental fee was established by the language of the statute as August 31, 1993. The implementing regulations also clearly required a filing by August 31, 1993, of either the \$100 rental fee or a certification of exemption for each of the relevant assessment years. See 106 Stat 1378-79; 43 CFR 3833.1-5(b); 3833.1-7(b), (d) (1993). The terms "file" or "filed" are defined in the applicable regulations as "being received and date stamped by the proper BLM office." 43 CFR 3833.0-5(m) (1993).

Wright filed separate certifications of exemption for the 1993 and 1994 assessment years with BLM on September 1, 1993, as evidenced by the date stamp on the documents. In his statement of reasons for appeal Wright states that he drove to Reno and filed the forms with the Reno BLM office before noon on September 1, 1993. Appellant states that he "relied upon the information on the form stating the deadline to be 12:00 o'clock noon on September 1, 1993."

The September 1 date does appear on the certification of exemption form. The certification states that the assessment year begins at noon on September 1 and ends at noon on September 1. We find no wording on the form which indicates, however, that the deadline for filing is September 1. Indeed, no filing deadline is noted on the certification of exemption form.

1/ The regulations promulgated to implement the mining claim rental fee provisions of the Act of Oct. 5, 1992, are found in the 1993 codification of Title 43 of the Code of Federal Regulations at Subpart 3833.

As noted above, the filing deadline is clearly established by the terms of the statute and the implementing regulations. It is unfortunate that Wright misinterpreted the assessment year dates on the form as the filing date. However, all persons dealing with the Government are presumed to have knowledge of relevant statutes and 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). Enactment of the statute gave notice of the new requirement and established the deadline. In addition, notice of the requirement to pay rental fees on or before August 31, 1993, was published in the Federal Register, as were the subsequently promulgated rules. 57 FR 54102 (Nov. 16, 1992); 58 FR 38186 (July 15, 1993).

Wright admits he did not file his certifications of exemption by August 31, 1993. Further, appellant does not claim to have paid any rental fees. When a claimant fails to file a timely application or qualify for a small miner exemption from the rental fee requirement, failure to pay the rental fee in accordance with the Act of October 5, 1992, and the regulations result in a conclusive presumption of abandonment. James L. Patterson, supra; Edwin L. Evans, 132 IBLA 103, 106 (1995); William B. Wray, 129 IBLA at 175; Lee H. and Goldie E. Rice, 128 IBLA 137, 141 (1994). The Department is without authority to excuse lack of compliance with the rental fee requirement of the Act of October 5, 1992, to extend the time for compliance, or to afford any relief from the statutory consequences. Lester W. Pullen, 131 IBLA at 273; William B. Wray, 129 IBLA at 175; Lee H. and Goldie E. Rice, 128 IBLA at 141. In the absence of timely rental payments or an applicable exemption, BLM properly declared the claims abandoned and void. 43 CFR 3833.4(a)(2) (1993).

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.

C. Randall Grant, Jr.
Administrative Judge

I concur.

Bruce R. Harris
Deputy Chief Administrative Judge