

INTERIOR BOARD OF LAND APPEALS

Tom Hash

140 IBLA 244 (September 25, 1997)

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TOM HASH

IBLA 96-302

Decided September 25, 1997

Appeal from a decision by the California State Office, Bureau of Land Management, declaring nine placer mining claims abandoned and void for failure to pay claim maintenance fees or file a small miner waiver certificate by August 31, 1995. CAMC 26790 through CAMC 26796, CAMC 34415, and CAMC 120815.

Affirmed.

1. Evidence: Presumptions--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

One who chooses a means of delivery thereby assumes the risk that his chosen agent may not deliver the thing that was sent. The presumption of regularity that BLM officials have properly discharged their duties and have not lost or misplaced legally significant documents filed with them is not rebutted with out probative evidence that BLM received the disputed document.

APPEARANCES: Tom Hash, Ouray, Colorado, pro se.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Tom Hash has appealed a Decision by the California State Office, Bureau of Land Management (BLM), dated March 7, 1996, declaring the Grant Creek #1 through #8 and the Rattlesnake placer mining claims (CAMC 26790 through CAMC 26796, CAMC 34415, and CAMC 120815) abandoned and void for failure to pay claim maintenance fees of \$100 per claim or file a small miner waiver certificate by August 31, 1995, as required by the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312, 405 (1993), codified at 30 U.S.C. § 28f (1994).

Appellant argues that in July 1995, he mailed his maintenance fee waiver certificate and at the same time mailed forms required by the Corps of Engineers and the property taxes due on the claims. He states that the latter two were timely received and that he does not understand why BLM does not have the maintenance fee waiver certificate. He states that the mining claims provide a substantial portion of his yearly income.

The Omnibus Budget Reconciliation Act of 1993 requires the holder of an unpatented mining claim to pay, for the years 1994 through 1998, a claim maintenance fee of \$100 per year. 30 U.S.C. § 28f(a) (1994). It allows the Department to waive the fee for a claimant who certifies that, on the date the payment was due, the claimant held "not more than 10 mining claims, mill sites or tunnel sites, or any combination thereof, on public lands" and performed the assessment work required by the Mining Law of 1872. Id. § 28f(d); see id. § 28. The legal consequence of failure to comply was specified by Congress: "Failure to pay the claim maintenance fee * * * shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law." Id. § 28i.

The BLM has provided by regulation that a mining claim maintenance fee will be considered to have been timely received if it is

received within the time period prescribed by law, or, if mailed to the proper BLM office, is contained within an envelope clearly post-marked by a bona fide mail delivery service within the period prescribed by law and received by the proper BLM State Office by 15 calendar days subsequent to such period * * *.

43 C.F.R. § 3833.0-5(m).

[1] Review of the case files for the mining claims at issue in this appeal discloses that they contain the original and copies of affidavits of assessment work received by BLM on August 25, 1995, but do not contain either accounting documentation showing payment of claim maintenance fees by August 31, 1995, or a small miner waiver certificate. For purposes of review, we assume that Appellant mailed a small miner waiver certificate to BLM, as he asserts. Nevertheless, the Board has stated many times that "one who chooses a means of delivery thereby assumes the risk that his chosen agent may not deliver the thing that was sent." Morgan Richardson Operating Co., 126 IBLA 332, 333 (1993). The Board also applies a presumption of regularity that BLM officials have properly discharged their duties and have not lost or misplaced legally significant documents filed with them. Silver King Mining Co., 122 IBLA 357, 359 (1992). The presumption can be rebutted by probative evidence that BLM received the document, but Appellant has not provided any evidence to show that his small miner waiver certificate was received by BLM. See id.; International Metals & Energy, 114 IBLA 221, 223 (1990).

The BLM correctly determined that, as a matter of law, Appellant's mining claims became abandoned and void for failure to pay the claim maintenance fees or file a small miner waiver certificate. Appellant may wish to consult with BLM to determine whether the claims can be relocated.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision of the California State Office is affirmed.

James P. Terry
Administrative Judge

I concur.

Franklin D. Amess
Administrative Judge