

INTERIOR BOARD OF LAND APPEALS

Dennis Stinger

141 IBLA 207 (November 13, 1997)

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DENNIS STINGER

IBLA 94-805

Decided November 13, 1997

Appeal from a Decision of the Montana State Office, Bureau of Land Management, declaring mining claims abandoned and void for failure to pay rental fees or submit certifications of exemption from payment by August 31, 1993. MMC 156634, MMC 156635, MMC 164727, and MMC 164728.

Affirmed.

1. Mining Claims: Abandonment–Mining Claims: Rental or Claim Maintenance Fees: Generally–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 that assessment year, the claims are properly deemed abandoned and void.

APPEARANCES: Dennis Stinger, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Dennis Stinger has filed a notice of appeal from two separate Decisions of the Montana State Office, Bureau of Land Management (BLM or the Bureau), both dated July 13, 1994, declaring certain mining claims abandoned and void. One Decision was addressed to Dennis Stinger and dealt with mining claims MMC 156634, MMC 156635, and MMC 164728 (named Donna V, Raydon #1, and Ponce de Leon, respectively). The other Decision that Dennis Stinger has appealed was addressed to Kelvin Stinger and dealt with

MMC 164727. ^{1/} The basis for both BLM Decisions was the failure to pay rental fees or submit qualifying certifications of exemption from payment by August 31, 1993, as required by the Act of October 5, 1992 (also known as the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993), Pub. L. No. 102-381, 106 Stat. 1374, 1378-79 (1992).

The Notice of Appeal filed by Dennis Stinger purported to appeal six mining claims, including two mining claims not addressed in the BLM Decisions (MMC 164730 and MMC 165242). On August 18, 1994, BLM acknowledged receipt of Stinger's appeal in regard to the four claims adjudicated in the July 1994 Decisions. However, in another Decision, also issued on August 18, 1994, BLM noted that no final decision had been issued in regard to two of the mining claims identified by Stinger in his appeal, MMC 164730 and MMC 165242. Hence, BLM concluded that any appeal in regard to those two claims was premature. The BLM Decision treated Stinger's appeal with respect to those two claims as a protest and dismissed the protest as premature because the facts had not yet been adjudicated by BLM. In the absence of an appealable decision regarding these latter claims, the "appeal" was properly treated as a protest. See 43 C.F.R. §§ 4.410(a), 4.450-2; Kenneth W. Bosley, 99 IBLA 327, 332 (1987). Because BLM issued final Decisions adjudicating only mining claims MMC 156634, MMC 156635, MMC 164727, and MMC 164728, only those four claims are at issue here.

All four claims were declared abandoned and void because BLM concluded that the requirements of the Act of October 5, 1992, had not been met. The Bureau explained that, under the Act 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. No rental fees or certification of exemption were received by BLM.

^{1/} We note that the location notice for MMC 164727 identifies Kelvin Stinger as the sole locator. Authority to represent a party before the Board is governed by regulation at 43 C.F.R. § 1.3 which limits practice before the Department to, inter alia, attorneys and individuals on their own behalf or on behalf of a member of their family or on behalf of a partnership of which the individual is a member. The identity of the last names suggests there is a family relationship. Further, the record includes affidavits of annual assessment work for all four mining claims showing that since December 1990 the annual assessment work has been done at the request of, and paid for by, the Van Heel Joint Venture. Moreover, the affidavit of annual assessment work for these claims filed in December 1989 shows the assessment work was done at the request of Dennis Stinger and "paid by Al, Kelvin, Lennie, Stingers." In the past, the Board has recognized the existence of partnerships to allow an individual partner to represent the partnership on appeal. See Joe Bob Hall, 135 IBLA 284, 285 (1996).

that The resolution of this appeal is controlled by provisions of statute. The Act of October 5, 1992, provides in part

for fiscal year 1993, 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 a similar provision establishing rental fees for the assessment year ending at noon on September 1, 1994, requiring payment of an additional \$100 rental fee on or before August 31, 1993. 106 Stat. 1378-79. Implementing Departmental regulations confirmed that a "rental fee of \$100.00 for each mining claim * * * 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 C.F.R. § 3833.1-5(b) (1993). ^{2/}

[1] The statute further provided that "failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant." 106 Stat. 1379; see 43 C.F.R. § 3833.4(a)(2) (1993). The Act provided only one exception to this annual rental requirement, the small miner exemption, available only to claimants who hold 10 or fewer claims on Federal lands. 106 Stat. 1378-1379; 43 C.F.R. § 3833.1-5(d) (1993); 43 C.F.R. § 3833.1-6 (1993) (qualifications); and 43 C.F.R. § 3833.1-7 (1993) (filing requirements). Thus, the Act provides that the claimant may, in certain circumstances, elect to either pay the rental fee or perform the assessment work, certify (by August 31, 1993) the performance of such work (prospectively in the case of work for the assessment year ending September 1, 1994), and meet the filing requirements of section 314 of FLPMA, 43 U.S.C. § 1744 (1994). See 106 Stat. 1378, 1379; 43 C.F.R. § 3833.1-7 (1993). The applicant for a small miner exemption is required, however, to file a separate certificate by August 31, 1993, for each of the assessment years (ending September 1, 1993, and ending

^{2/} The regulations promulgated to implement the mining claim rental fee provisions of the Act are found in the 1993 codification of Title 43 of the Code of Federal Regulations at Subpart 3833.

September 1, 1994) for which he is seeking an exemption. 43 C.F.R. § 3833.1-7(d) (1993); Daniel D. Dooley, 138 IBLA 352, 354 (1997); Jim Wright, 138 IBLA 297 (1997); Richard L. Shreves, 132 IBLA 138, 140 (1995); Edwin L. Evans, 132 IBLA 103 (1995). Therefore, in the absence of payment of annual rental fees, claimant must, in addition to compliance with the annual assessment work requirements under FLPMA, 43 U.S.C. § 1744 (1994), submit the exemption forms on or before August 31, 1993, for both the 1993 and 1994 assessment years.

In the present case, it is undisputed that no rental fees were paid on or before August 31, 1993, with respect to any of the claims at issue, for either of the assessment years ending September 1, 1993, or September 1, 1994. There is no record of payment, and Stinger does not assert that such payment was made. Nor does Stinger assert that any certifications of exemption were filed for the claims by August 31, 1993. In his reasons for appeal, he contends that the regulations were unclear and that thousands of dollars had been invested in the claims.

Despite the financial consequences to claimant, the Department is without authority to excuse lack of compliance with the rental fee requirement of the Act, to extend the time for compliance, or to afford any relief from the statutory consequences. Chester Wittwer, 136 IBLA 96, 99 (1996). Further, claimant's lack of understanding of the regulations does not provide a basis for reversing BLM's Decision. 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); Thomas L. Sawyer, 114 IBLA 135, 139 (1990). It is unfortunate that claimant did not understand the requirement that rental fees or exemption forms for both assessment years were required by the Act to be paid or filed not later than August 31, 1993. However, in the absence of timely rental payments or an applicable exemption, BLM properly declared the claims abandoned and void. 43 C.F.R. § 3833.4(a)(2) (1993); Edwin L. Evans, *supra*.

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 Decisions appealed from are affirmed.

C. Randall Grant, Jr.
Administrative Judge

I concur.

John H. Kelly
Administrative Judge