

INTERIOR BOARD OF LAND APPEALS

Miriam Mracek Addison

142 IBLA 30 (December 15, 1997)

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MIRIAM MRACEK ADDISON

IBLA 94-827

Decided December 15, 1997

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, declaring mining claims abandoned and void for failure to pay rental fees or qualify for exemption. NMMC 68435 through NMMC 68456.

Affirmed.

1. Evidence: Presumptions–Mining Claims: Abandonment–Mining Claims: Rental or Claim Maintenance Fees: Generally

Responsibility for satisfying the rental fee requirement of 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), resides with the owners of an unpatented mining claim, mill or tunnel site as Congress has mandated that failure to make the annual payment of the claim rental fee or qualify for exemption as required by the Act shall conclusively constitute an abandonment of the claim.

APPEARANCES: Miriam Mracek Addison, Phoenix, Arizona, pro se; Margaret Miller Brown, Esq., U.S. Department of the Interior, Office of the Field Solicitor, Santa Fe, New Mexico.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Miriam Mracek Addison has appealed 1/ from a May 20, 1994, Decision of the California State Office, Bureau of Land Management (BLM), declaring mining claims NMMC 68435 through NMMC 68456 abandoned and void for failure

1/ Appellant declares that the appeal is filed on behalf of James Mracek, Ann Mracek Grosser, and Donna Mracek Kenly, as well as herself. Absent speculation that a family relationship exists, there is no suggestion Addison is qualified to represent the others in this appeal under Departmental regulation 43 C.F.R. § 1.3. However, the ability to bring this appeal on her own behalf renders such an issue moot.

to pay rental fees in the amount of \$100 per claim or submit a certification of exemption from payment of rental fees for both the 1993 and 1994 assessment years.

In its Decision, BLM held that in accordance with the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Appropriations Act), Pub. L. No. 102-381, 106 Stat. 1374, 1378-79 (1992), claimants were required to pay the \$100 per claim rental fees for both the 1993 and 1994 assessment years on or before August 31, 1993, and that failure to submit those fees or to furnish a certification of exemption from payment constituted a statutory abandonment of the claims.

On appeal, Addison asserts, "We were advised by [BLM] that we did not have to pay rental fees if we had less than ten (10) claims" and "were never advised that we needed to file a Certification of Exemption."

[1] The substantive provisions of the Appropriations Act relating to mining claims established 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 Appropriations Act contained an identical provision establishing rental fees for the assessment year ending at noon on September 1, 1994, requiring payment of the \$100 rental fee on or before August 31, 1993. 106 Stat. 1378-79. Congress directed "[t]hat 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. The Appropriations Act further provided for an exemption, under certain circumstances, from the payment of rental fees for claimants holding 10 or fewer claims, the so-called small miner exemption. Id.

The case record contains nothing indicating payment was tendered or certification of the small miner exemption was filed. Under such circumstances, the requirements of the Appropriations Act were not satisfied. Notwithstanding the failure to pay rental fees, claimants did not qualify for exemption, despite a misplaced belief that they might, as they held more than 10 claims together. See 43 C.F.R. § 3833.1-6(a)(3) (1993).

As we have noted on a number of occasions with respect to compliance with the rental fee requirements, the Department has no authority to excuse lack of compliance, extend the time for compliance, or to afford any relief from the statutory consequences, and the Board may not consider special facts or provide relief in view of mitigating circumstances. See, e.g., Maurine M. Carpenter, 136 IBLA 266 (1996); Chester Wittwer, 136 IBLA 96 (1996). Neither claimant's lack of knowledge of the requirements nor BLM's failure to directly notify them of any filing criteria excuses a lack of compliance with the statutory mandate. All persons dealing with the Government are presumed to have knowledge of statutes and regulations relevant to their situation. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Thomas L. Sawyer, 114 IBLA 135, 139 (1990); Magness Petroleum Corp., 113 IBLA 214, 217 (1990). Where a mining claimant did not qualify for a small miner exemption from the rental fee requirement, failure to pay the fee in accordance with the statute and regulations resulted in a conclusive presumption of abandonment. William B. Wray, 129 IBLA 173, 175 (1994); Lee H. and Goldie E. Rice, 128 IBLA 137, 141 (1994). We must conclude, therefore, that, inasmuch as it is undisputed that claimants neither paid the rental fees required by the Appropriations Act nor timely submitted the filings required to qualify for the small miner exemption, BLM properly declared their mining claims abandoned and void.

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 appealed from is affirmed.

James P. Terry
Administrative Judge

I concur.

James L. Byrnes
Chief Administrative Judge