

INTERIOR BOARD OF LAND APPEALS

Patrick M. Layman (On Reconsideration)

144 IBLA 367 (June 25, 1998)

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PATRICK M. LAYMAN
(ON RECONSIDERATION)

IBLA 95-394R

Decided June 25, 1998

Petition for Reconsideration of Patrick M. Layman, IBLA 95-394 (December 4, 1997), which affirmed as modified a decision of the Fairbanks, Alaska, Support Center, Bureau of Land Management, declaring mining claims abandoned and void for failure to file affidavit of assessment work. F-55434-55439; F-55449-55451.

Petition for reconsideration granted; prior order reversed; BLM decision reversed.

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

A mining claimant who paid the rental fee for the 1994 assessment year was not required to perform assessment work for that year in order to qualify for the small miner waiver of the maintenance fee for the 1995 assessment year.

APPEARANCES: Patrick M. Layman, Eagle, Alaska, pro se; Dennis J. Hopewell, Esq., Deputy Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Patrick M. Layman has filed a petition for reconsideration of our December 4, 1997, Order which affirmed as modified the April 17, 1995, Decision of the Fairbanks, Alaska, Support Center, Bureau of Land Management (BLM), declaring Appellant's mining claims abandoned and void for failure to file an affidavit of assessment work on or before December 30, 1994. F-55434-55439; F-55449-55451. Appellant states that he paid the rental fees for the 1994 assessment year and asserts that no assessment work for that year was required. He refers to our decision in Cheryl Jong, 142 IBLA 75 (1997), in which we held that mining claims for which maintenance fees were paid for the 1996 assessment year were not properly declared forfeited and void for failure to certify performance of assessment work before December 30, 1996, because, following payment of the required fees, no assessment work was required. Appellant believes that

the same reasoning applies to his case. The BLM has filed a response in support of Layman's petition, stating that on the basis of Jong, we should grant Layman's petition and reverse its 1995 Decision.

The Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (the Rental Fee Act), Pub. L. No. 102-381, 106 Stat. 1378-79 (1992), required each claimant to pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993, for each unpatented mining claim, mill or tunnel site in order to hold such claim for the assessment year ending at noon on September 1, 1993. The Rental Fee Act also contained an identical 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. Failure to make the annual payment of the claim rental fee "conclusively constitute[d] an abandonment of the unpatented mining claim, mill or tunnel site by the claimant." 106 Stat. 1379; see also 43 C.F.R. § 3833.4(a)(2) (1993). Although the Rental Fee Act provided an exemption for small miners who met certain qualifications, Layman paid the rental fees.

The Rental Fee Act imposed the rental fees "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))," and that Act further provided that "the annual claim rental fee, where applicable, shall replace applicable assessment requirements and expenditures through fiscal year 1994." Act of Oct. 5, 1992, 106 Stat. 1378, 1379 (emphasis added).

On August 10, 1993, Congress enacted section 10101(a) of the Omnibus Budget Reconciliation Act (the Maintenance Fee Act), 30 U.S.C. § 28f(a) (1994), requiring payment of a "claim maintenance fee" of \$100 per claim on or before August 31 of each year for years 1994 through 1998. Like the Rental Fee Act, the Maintenance Fee Act provided that payment of the maintenance fee would be in lieu of the assessment work requirements of 30 U.S.C. § 28-28e (1994) and the related filing requirements of section 314 of FLPMA.

The Maintenance Fee Act allows the Department to waive the fee for a "small miner," i.e., one 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. 30 U.S.C. § 28f(d) (1994). On September 2, 1994, Layman filed a maintenance fee waiver certification listing nine mining claims.

Although maintenance fees must be paid "before the commencement of the assessment year," see 30 U.S.C. § 28f(b) (1994), a claimant seeking a waiver must "have performed assessment work required * * * for the assessment year ending on noon of September 1 of the calendar year in which payment of the claim maintenance fee was due." 30 U.S.C. § 28f(d)(1)(B)

(1994) (emphasis added). The BLM has implemented this provision with a regulation that requires a claimant seeking a waiver to declare that "assessment work requirements have been or will be completed by the date the payment is due, which is each August 31, for the assessment year just ending." 43 C.F.R. § 3833.1-7(d)(2). When Layman filed no affidavits of assessment work for the claims on or before December 30, 1994, BLM issued its April 17, 1995, Decision declaring his claims abandoned and void, based on its view that the affidavits were required because Layman had filed a maintenance fee waiver certificate. On December 4, 1997, we issued an order affirming BLM's decision as modified, noting that under 43 C.F.R. § 3833.4(a)(1), failure to file the documents constituted a "forfeiture" rather than an abandonment.

On December 19, 1997, we issued our decision in Cheryl Jong, *supra*, a case involving a mining claimant who paid maintenance fees for the 1996 assessment year but who filed a small miner waiver for the 1997 assessment year. BLM had similarly declared her claims void on the basis of its view that her failure to perform the assessment work for the 1996 assessment year disqualified her from the small miner waiver she filed for the 1997 assessment year. We reversed BLM, holding that when Jong paid the maintenance fees for the 1996 assessment year, no assessment work was required. Layman contends that his payment of the rental fees should have the same effect. BLM agrees, and so do we.

We note that the Maintenance Fee Act eliminated several of the Rental Fee Act's requirements for obtaining a small miner waiver, so that claimants who could not qualify for an exemption from the rental fee could qualify for a waiver of the maintenance fee. Although a maintenance fee payment made by August 31, 1994, covered the 1995 assessment year, *see* 30 U.S.C. § 28f(b), a claimant seeking a small miner waiver was required to "have performed assessment work required under the Mining Law * * * to maintain the mining claims * * * for the assessment year ending on noon of September 1 of the calendar year in which the payment was due." 30 U.S.C. § 28f(d)(1)(B) (emphasis added). Thus, one seeking a waiver of the payment due by August 31, 1994, "must have performed the assessment work required" for the 1994 assessment year. *Id.* (emphasis added).

[1] Because Layman paid the rental fee for the 1994 assessment year, there was no assessment work required for that year because the rental fee replaced that requirement. The expiration of the Rental Fee Act did not alter the legal effect of payments previously made thereunder, and we find nothing in the Maintenance Fee Act or its implementing regulations purporting to revoke that effect. Accordingly, we conclude that a mining claimant who paid the rental fee for the 1994 assessment year was not required to perform assessment work for that year in order to qualify for the small miner waiver of the maintenance fee for the 1995 assessment year.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Appellant's

petition for reconsideration is granted, our December 4, 1997, Order is reversed, and the Decision appealed from is reversed.

John H. Kelly
Administrative Judge

I concur.

T. Britt Price
Administrative Judge