

INTERIOR BOARD OF LAND APPEALS

Flynn C. Johnson

155 IBLA 24 (May 1, 2001)

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FLYNN C. JOHNSON

IBLA 2000-395

Decided May 1, 2001

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring mill site claim forfeited by operation of law for failure to pay maintenance fee or file waiver certification for the 2000 assessment year. NMC 799860.

Affirmed.

1. Mining Claims: Abandonment! ! Mining Claims: Rental or Claim Maintenance Fees:
Generally--Regulations: Applicability--Regulations: Interpretation

As enacted by Congress, the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312, originally required mining claimants to pay claim maintenance fees on or before Aug. 31 of each year for the years 1994 through 1998, and regulations implementing this legislation provided that the requirement to pay a claim maintenance fee did not apply to any claim located after Sept. 29, 1998. However, on Oct. 21, 1998, Congress passed the Omnibus Consolidated and Emergency Supplemental Appropriations Act for 1999 which contained a provision requiring payment of the maintenance fee of \$100 per claim on or before Sept. 1 of each year for the years 1999 through 2001 and that statute made clear that the maintenance fee was required for each claim whether located before or after Oct. 21, 1998.

APPEARANCES: Flynn C. Johnson, Ely, Nevada, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Flynn C. Johnson has appealed from a July 27, 2000, decision of the Nevada State Office, Bureau of Land Management (BLM), declaring the Black Sheep Mill Site claim forfeited by operation of law because neither the \$100 per claim maintenance fee nor waiver certification was filed for the claim for the 2000 assessment year on or before September 1, 1999. Appellant contends that because his claim was located on January 6, 1999, "the maintenance fee does not apply to his claim."

Under 30 U.S.C. § 28f(a) (Supp. IV 1998), Congress has required the holder of each unpatented mining claim, mill site, or tunnel site, "whether located before or after October 1, 1998," (emphasis added) to pay a claim maintenance fee of \$100 per claim on or before September 1 of each year for the years 1999 through 2001. 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." 30 U.S.C. § 28i (1994). Congress, however, has provided the Secretary with discretion to waive the fee for a small miner who holds not more than 10 mining claims, mill sites, or tunnel sites, or combination thereof, on public lands and has performed assessment work required under the Mining Law of 1872. 30 U.S.C. § 28f(d)(1) (1994). BLM has implemented this statute with a regulation that requires a claimant to file "proof of the * * * conditions for exemption * * * with the proper BLM office by the September 1 at the beginning of the assessment year for which the waiver is sought." 43 C.F.R. § 3833.1-6(d)(2) (as amended, 64 Fed. Reg. 47022 (Aug. 27, 1999)).

Appellant located his claim on January 6, 1999, and he paid a maintenance fee for the 1999 assessment year at the time he located the claim as required by 30 U.S.C. § 28f(b) (1994). However, an additional maintenance fee or a waiver certificate was due by September 1, 1999, to hold the claim for the 2000 assessment year beginning on September 1, 1999, but appellant did not submit a maintenance fee or waiver at that time. In support of his contention that no maintenance fee was due for his claim because it was located on January 6, 1999, appellant cites the former version of 43 C.F.R. § 3833.0-5(v) (1998) that states: "The requirement to pay a claim maintenance fee does not apply to any claim located after September 29, 1998."

[1] As enacted by Congress, the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (1993 Act) originally required mining claimants to pay claim maintenance fees on or before August 31 of each year for the years 1994 through 1998. The regulation cited by appellant was published to implement that legislation. 59 Fed. Reg. 44846 (Aug. 30, 1994). On October 21, 1998, Congress passed the Omnibus Consolidated and Emergency Supplemental Appropriations Act for 1999, Pub. L. No. 105-27, 112 Stat. 2681-235 (1999 Act) which contained a provision requiring payment of the maintenance fee of \$100 per claim on or before September 1 of each year for the years 1999 through 2001. The provision of that statute made clear that payment of a maintenance fee was required for each claim, "whether located before or after October 21, 1998." (Emphasis added.)

The regulation cited by appellant was published on August 30, 1994, to implement the requirement of section 10101 of the Omnibus Budget Reconciliation Act of August 10, 1993, 30 U.S.C. § 28f(a) (1994), that claimants pay a claim maintenance fee of \$100 per claim on or before August 31 of each year for the years 1994 through 1998. When Congress extended the maintenance fee requirements beyond 1998, in the 1999 Act, for all claims, appellant was subject to the statutory requirement to pay a claim maintenance fee for his claim each year through September 1, 2001.

The 1999 Act was already in effect when appellant located his claim on January 6, 1999. While BLM did not publish regulatory amendments to implement the changes until August 27, 1999, the regulations were effective on publication to implement the provisions of the statute which related to payments due on September 1, 1999. 64 Fed. Reg. 47021 (Aug. 27, 1999). The applicable regulation now provides: "The requirement to pay a claim maintenance fee does not apply to any claim located after September 29, 2001." 43 C.F.R. § 3833.0-5(v) (1999).

In this case as in the earlier maintenance fee cases, we must hold that the enactment of the statute gave notice of the new requirement and established the deadline. See Jim Wright, 138 IBLA 297, 299 (1997); Keith Lindsey, 130 IBLA 346, 348 (1994). Those who do business with the Government are presumed to have knowledge of the requirements of statutes. See Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 385 (1947).

Although we sympathize with appellant in the loss of his claim, the provisions of the statute are self-executing, and even where extenuating circumstances are asserted, BLM and this Board are without authority to excuse lack of compliance with the maintenance fee requirement of the Act, to extend the time for compliance, or to afford any relief from the statutory consequences. Richard W. Cahoon Family Limited Partnership, 139 IBLA 323, 326 (1997); Paul W. Tobeler, 131 IBLA 245, 249 (1994).

Therefore, 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.

Gail M. Frazier
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge