

INTERIOR BOARD OF LAND APPEALS

John and Linda Nelson

156 IBLA 195 (January 29, 2002)

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JOHN AND LINDA NELSON

IBLA 2000-180

Decided January 29,2002

Appeal from a decision by the Oregon State Office, Bureau of Land Management, declaring a mining claim void by operation of law for failure to pay a claim maintenance fee or to file a timely waiver certification. ORMC 144634.

Affirmed.

1. Mining Claims: Claim Maintenance Fees: Generally--Mining Claims: Claim Maintenance Fees: Small Miner Exemption

Under 30 U.S.C. § 28f(a) (Supp. IV 1998), the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee of \$100 per claim on or before September 1 of each year for the years 1999 through 2001. The statute gives the Secretary discretion to waive the fee for a small miner who holds not more than 10 mining claims, mill sites, or combination thereof. A claimant must file proof of conditions for waiver by the September 1 immediately preceding the assessment year for which the waiver is sought. 43 CFR 3833.1-6(d)(2).

2. Administrative Procedure: Burden of Proof--Evidence: Burden of Proof--Evidence: Sufficiency--Evidence: Presumptions--Mining Claims: Claim Maintenance Fees: Generally--Mining Claims: Claim Maintenance Fees: Small Miner Exemption

A presumption of regularity supports the official acts of public officers. Absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Where BLM had no record of timely receipt of a small miner waiver certification, and appellants did not

produce authentic evidence demonstrating that BLM received a timely filing, appellants did not overcome the presumption of administrative regularity, and therefore forfeited their mining claim.

3. Administrative Procedure: Burden of Proof--Evidence: Burden of Proof--Evidence: Sufficiency--Evidence: Presumptions--Mining Claims: Claim Maintenance Fees: Generally--Mining Claims: Claim Maintenance Fees: Small Miner Exemption

Where appellants purported to provide evidence supporting their assertion that they timely filed a small miner waiver certification form for the 2000 assessment year by proffering a copy of a maintenance fee waiver certification allegedly stamped as received by BLM on August 23, 1999, but the document was an exact duplicate of the maintenance fee payment waiver certification that BLM had received for the 1999 assessment year except that two numbers in the date stamp had been manually altered, appellants did not meet their burden of showing, by reliable and authentic evidence, that they had timely filed either a mining claim maintenance fee or a small miner waiver exemption; thus, their mining claim was forfeited by operation of law.

APPEARANCES: John and Linda Nelson, Baker City, Oregon, pro se; Eric W. Nagle, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Portland, Oregon, for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE ROBERTS

John and Linda Nelson have appealed from a February 18, 2000, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring the Silver Spur mining claim, ORMC 144634, forfeited by operation of law because neither the \$100 per claim maintenance fee nor waiver certification was filed for the 2000 assessment year on or before September 1, 1999.

[1] Under 30 U.S.C. § 28f(a) (Supp. IV 1998), the holder of an unpatented mining claim, mill site, or tunnel site is required 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 timely 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). The Secretary is granted discretion to waive the fee for a claimant 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) (Supp. IV 1998)). 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 CFR 3833.1-6(d)(2). The claimed waiver is to be certified and attested to under penalty of 18 U.S.C. § 1001 (1994). 43 CFR 3833.1-7(d). 1/

In the notice of appeal, appellant Linda Nelson states: "I know that I sent in the proper forms. I have always sent in all the paper work that is required. I am sending a copy of the paper work and receipts." Attached to the notice of appeal, appellants have provided the following documents: a copy of a "mining claim affidavit" signed by John and Linda Nelson on August 20, 1999, certifying performance of annual assessment work for the assessment year ending September 1, 1999; a copy of a maintenance fee payment waiver certification that bears a date stamp appearing to read "99 AUG 23"; a copy of receipt and accounting advice #2451176 dated "8/23/99," which indicates that BLM received an annual assessment fee of \$5.00 for ORMC 144634; and two certified mail receipts bearing the identification number Z 407 724 967, which document that an article was mailed to BLM on August 20, 1999, and received by BLM on August 23, 1999.

In its Answer, BLM challenges the authenticity of the maintenance fee payment waiver certification, designated by the Answer as "Exhibit 2." BLM charges that "examination of Exhibit 2 reveals that [it] is not what appellants purport it to be." (Answer at 2.) BLM asserts:

A comparison of Exhibit 2 with the fee waiver certification submitted by appellants in 1998 (Exhibit 3) reveals that appellants apparently used their date-stamped copy of the 1998 certification to create a fictitious 1999 certification. Exhibit 2 is precisely the same as Exhibit 3 in all respects, except for the date indicated in the BLM date stamp. In Exhibit 2, the numerals in the "99 Aug 23" date appear to have been tampered with to create the new date. If this date stamp were authentic, these numerals would be identical to the authentic "99 Aug 23" date stamp on appellants' 1999 affidavit of labor (see Exhibit 5), but a comparison of the

1/ 18 U.S.C. § 1001 (1994) provides, in pertinent part:

"[W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
- (2) makes any materially false, fictitious, or fraudulent statement

or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both."

See also 43 U.S.C. § 1212 (1994), which provides: "Unsworn written statements made in public land matters within the jurisdiction of the Department of the Interior shall remain subject to section 1001 of Title 18."

two date stamps reveals that the numerals are not identical. The date stamp in Exhibit 2 is in precisely the same position on the page as the date stamp in Exhibit 3, despite the fact that, under BLM's date-stamping procedures, the date stamp can appear anywhere on a document, and it is highly unlikely that it would appear in precisely the same location on two different documents. \* \* \* The two documents contain identical typographical errors, including the first numeral of the ORMC number, and the misspelled word "Vally" in the address under Linda Nelson's name. The signatures are precisely the same.

(Answer at 2.)

With its Answer, BLM has submitted an affidavit (designated as Exhibit 4) signed by Sharon Mowery, who is employed by the Oregon State Office, BLM, as a Land Law Examiner in the Realty Records Section. In her affidavit, Mowery states that "[i]n 1998, BLM received a fee waiver certification for ORMC 144634 and date-stamped it on August 23, 1998 at 8:30 a.m." (Mowery Declaration at 2.) According to Mowery, in 1998, the Realty section did not date stamp the copy of the waiver form returned to the claimant, as was the standard practice in 1999. Mowery described the standard procedure in 1999 for processing mining claim maintenance fee waiver certifications as follows:

Upon receipt of the Waivers and/or Proofs of Labor, the documents are date stamped by the cashier with a Rapidprint electronic date stamp machine. Each document is date stamped separately to assure no pertinent information is over stamped. The date stamp can appear any place on the page, so it is highly unlikely the date stamp will appear in exactly the same place. After the cashier date stamps and enters any monies received into the accounting system, documents are forwarded to the mining adjudicators. The adjudicator reviews the file to assure that all information is accurate and timely. After the review is complete, we stamp the waiver form "Duplicate Copy Returned" \* \* \* . On the lines provided by the stamp, we write the date processed and our initials. We then make a copy of the signed form, and return it to the claimant along with a blank copy of the waiver form for the next filing year.

(Mowery Declaration at 1.) Mowery further states that she conducted a "diligent review" of the records for the Silver Spur mining claim. "Those records," she avers, "do not include evidence of payment of a \$100 maintenance fee or a maintenance fee waiver certification for the 2000 assessment year." (Mowery Declaration at 1.) Mowery attests that "[t]he only documents received by BLM in 1999 with respect to ORMC 144634 were a 'Mining Claim Affidavit,' showing proof of labor, and a \$5.00 assessment fee, both of which were received on August 23, 1999." (Mowery Declaration at 2.)

[2] In circumstances where an appellant was required to file a document and BLM has no record of receiving it, there is a legal presumption of regularity which attends the official acts of public officers in the proper discharge of their duties. Administrative officials are presumed to have properly discharged their duties by not losing or misplacing legally significant documents submitted for filing. Forcenergy, Inc., 151 IBLA 3, 8 (1999); Alice Thompson, 149 IBLA 98, 102-03 (1999) and cases cited; Wilfred Plomis, 139 IBLA 206, 208 (1997), and cases cited.

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is, however, rebuttable by probative evidence to the contrary. H.S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). This means that the burden of proof is shifted to the appellant to provide evidence that a filing was timely made and thereby rebut the presumption of administrative regularity. The presumption may not be rebutted by an uncorroborated statement that the document was submitted to BLM; such statements must be supported by authentic and reliable evidence. Lewis v. BLM, 150 IBLA 76, 81-82 (1999), and cases cited; H.S. Rademacher, supra.<sup>2/</sup> Where BLM has no record of a timely filing and appellants do not produce authentic evidence demonstrating that BLM received a timely filing, appellants will not prevail. Id.

[3] Appellants have purported to provide such evidence by proffering a copy of a maintenance fee waiver certification allegedly stamped as received by BLM on August 23, 1999. However, as BLM points out, the document contains irregularities which lead us to conclude that it is not authentic. The document is an exact duplicate of the maintenance fee payment waiver certification stamped as received by BLM on "98 AUG 21," except that two numbers in the date stamp are slightly altered. The date stamp in the proffered copy reads "99 AUG 23"; however, the second "9" in "99", and the "3" in "23" contain irregularities of line which indicate that they are products of individual penmanship rather than of an electronic date stamp machine. Thus, while appellants claim that the document is a copy of an original waiver certification for assessment year 2000 stamped as received by BLM on August 23, 1999, it is, in fact, a copy of the 1999 waiver certification filed with BLM on August 21, 1998, with the manual alterations we have just outlined made to the date stamp.

In its adjudication of appeals to determine the rights of parties to receive or preserve interests in Federal lands, this Board has a concomitant obligation to preserve the integrity of the process. Lee S. Bielski, 39 IBLA 211, 228, 86 I.D. 80, 89 (1979). The Board considers a violation of 18 U.S.C. § 1001 (1994) (quoted at n.1, supra) to be a serious matter. See, e.g., Funk Exploration, 73 IBLA 111, 114 (1983); Lee S. Bielski, supra.

<sup>2/</sup> In Lewis v. BLM, we stated that "[e]xamples of acceptable evidence demonstrating that a filing was received would include a copy of a return receipt with a datestamp showing receipt by BLM within the proper filing period or a BLM-prepared acknowledgment receipt." Lewis v. BLM, supra at 82.

However, BLM has not requested the Board to refer the case for criminal prosecution; we therefore will leave the matter of future prosecution in the hands of BLM.

Appellants have not met their burden of showing, by reliable and authentic evidence, that they timely filed either a mining claim maintenance fee or a small miner waiver exemption; thus, their mining claim is forfeited by operation of law.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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James F. Roberts  
Acting Chief Administrative Judge

I concur:

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Bruce R. Harris  
Deputy Chief Administrative Judge