

INTERIOR BOARD OF LAND APPEALS

Terri L. Duff

156 IBLA 326 (April 15, 2002)

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TERRI L. DUFF

IBLA 2002-224

Decided April 15, 2002

Appeal from a decision of the California State Office, Bureau of Land Management, declaring two placer mining claims forfeited by operation of law and, therefore, null and void. CAMC 249873, 259697.

Affirmed; petition for stay denied.

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

Under the provisions of 43 CFR 3833.0-5(m), submission of a fee payment waiver certification can be considered timely, even if not actually received by the due date, if the document is ultimately received within 15 days of the due date in an envelope which bears a postmark on or before the due date. Where, however, a waiver certification is either received more than 15 days after the due date or, if received within 15 days of the due date, is contained in an envelope which has been postmarked after the due date, the waiver certification has not been "timely filed" and, in the absence of payment of the required maintenance fees, the claims covered thereby are conclusively deemed forfeited by operation of law and are null and void.

APPEARANCES: Terri L. Duff, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Terri L. Duff has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated February 27, 2002, declaring the Midnight (CAMC 279873) and the Black Diamond (CAMC 259697) placer mining claims forfeited by operation of law and null and void for failure to either submit the required maintenance fees for the 2002 assessment year or file a fee payment waiver certification on or before September 1, 2001, as required by the Omnibus Budget Reconciliation Act of August 10, 1993, 107 Stat. 405, as amended by the Act of October 21, 1998, 112 Stat. 2681-235, 30 U.S.C. § 28f (Supp. IV 1998). Together with her statement of reasons for appeal, appellant has also submitted a petition seeking a stay

in implementation of BLM's decision pending full review by this Board. However, for the reasons set forth below, we have concluded that no useful purpose would be served in granting appellant's request for a stay since it is clear that the State Office decision must be affirmed.

The BLM decision noted that a waiver certification for the subject claims for the 2002 assessment year was received by BLM on October 9, 2001, in an envelope bearing an October 3, 2001, postmark. Citing 43 CFR 3833.1-7(d) and 43 CFR 3833.0-5(m), BLM concluded that this submission was untimely and could not otherwise prevent the automatic forfeiture of the claims effected by 30 U.S.C. § 28i (1994).

In her appeal, appellant does not assert that BLM timely received the waiver certification. Rather, appellant notes that: "around the time we mailed the small claim waiver there was a large amount of mail that was lost and not delivered for a month or two." Appellant averred that she was presently investigating the matter and attempting to locate the individuals involved, since she believed that her certification was included among the mail that was mishandled. For this reason, she requested that the Board stay implementation of BLM's decision at the present time. The problem with appellant's request is that, even if she could establish that the postal authorities had mishandled her waiver certification, it would not change the result mandated by the law in this case.

Under the provisions of 30 U.S.C. § 28f(a) (Supp. IV 1998), the holder of every unpatented mining claim, millsite, or tunnel site was required to pay a claim maintenance fee in the amount of \$100 for each claim, millsite or tunnel site, on or before September 1 of each year from 1999 through 2001, in lieu of performance of the assessment work otherwise required by the mining law. Congress further provided that failure to pay the claim maintenance fee "shall conclusively constitute a forfeiture of the * * * claim [which] shall be deemed null and void by operation of law." 30 U.S.C. § 28i (1994). Congress, however, authorized the waiver of this annual maintenance fee for claimants who held ten or fewer claims and who had performed the required assessment work, upon condition that they certify in writing to the Secretary their qualifications for the waiver of the fee on the date that payment was otherwise due. See 30 U.S.C. § 28f(d)(1) (Supp. IV 1998).

In order to avail themselves of the small miner waiver authorized by Congress, claimants are required, under regulations promulgated by the Department, to file the waiver certification "on or before September 1 each year to hold the claims each assessment year beginning at 12 o'clock noon on September 1 of the calendar year the certification is due." 43 CFR 3833.1-7(d). Failure to either file the waiver certification or pay the maintenance fee within the time periods prescribed is deemed conclusively to constitute a forfeiture of the mining claim, millsite, or tunnel site. See 43 CFR 3833.4(a)(2).

Appellant asserts that she timely mailed the waiver certification and that it was presumably lost by the postal service through no fault of her own. But the fact that appellant may have mailed the certification with

sufficient time so that it would normally be timely received by BLM does not establish that the document in question was "timely filed" with BLM within the meaning of 43 CFR 3833.1-7(d).

As a general matter, documents are "filed" with BLM when they are actually received by BLM, and the mere fact that a document may have been timely delivered to a postal delivery service does not constitute timely filing of that document. See, e.g., Anthony J. Perchetti, 89 IBLA 320, 321 (1985); G. R. Marquardson, 49 IBLA 114, 117 (1980); see also 43 CFR 1822.11 ("The date of mailing is not the date of filing.") One reason for this rule is that the post office is generally considered to be the agent of the sender and delivery of the document to an individual's own agent does not constitute delivery of the mail to a third party. Moreover, because the postal authorities operate as agents of the sender, the consequences resulting from any delay in delivery are properly borne by the individual who chose the means of delivery. See Clifford T. Fredrickson, 144 IBLA 105, 107-108 (1998); Gary Milske, 44 IBLA 21, 24 (1979).

However, with respect to the submission of the small miner waiver certification or, alternatively, the maintenance fee, the regulations provide that a filing or fee will be considered timely "if received within the time period prescribed by law, or, if mailed to the proper BLM office, is contained within an envelope clearly postmarked by a bona fide mail delivery service within the period prescribed by law and received by the proper BLM State Office by 15 calendar days subsequent to such period." 43 CFR 3833.0-5(m) (emphasis supplied). This regulation, in effect, relaxes the general rule and allows treatment of a document as timely filed if it was postmarked on or before the due date and received within 15 days subsequent to the due date. See generally Bellmetal Enterprises, Inc., 140 IBLA 76 (1997).

The problem in the instant case is that it is clear that the submission fails both tests. First of all, since the envelope bears an October 3, 2001, postmark it clearly was not "postmarked * * * within the period prescribed by law." Similarly, since BLM did not receive the waiver certification until October 9, 2001, appellant cannot avail herself of the benefits afforded by 43 CFR 3833.0-5(m) because the certification was not received within 15 days subsequent to the due date, i.e., September 1, 2001. Thus, consistent with the regulatory and statutory prescriptions, we must find that appellant failed to either pay the required claim maintenance fee or file a small miner waiver certification within the necessary time limit.

The statute expressly provides that, in the absence of the timely filing of a small miner waiver certification, failure to pay the required maintenance fee "shall conclusively constitute a forfeiture of the * * * claim [which] shall be considered null and void." 30 U.S.C. § 28j (1994). Except to the extent expressly authorized by Congress, the Department has no authority to excuse lack of compliance with the maintenance fee requirements, to extend the time for compliance, or to afford any relief from the statutorily-mandated consequences. See generally Carl Riddle, 155 IBLA 311, 314 (2001); Flynn C. Johnson, 155 IBLA 24, 26 (2001).

The decision of BLM holding the claims involved herein forfeited by operation of law was clearly correct and must be affirmed. In light of this conclusion, appellant's request that we stay the effect of the BLM decision pending resolution of her appeal is denied on the grounds of mootness.

Therefore, 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 and the petition for stay is denied as moot.

James L. Burski
Administrative Judge

I concur:

David L. Hughes
Administrative Judge