

WHEATON D. BLANCHARD

IBLA 88-57

Decided January 4, 1990

Appeal from a decision of the California State Office, Bureau of Land Management, denying petition for deferment of annual assessment work. CA MC 180378-383

Affirmed.

1. Mining Claims: Generally--Mining Claims: Assessment Work

To be entitled to a deferment from the requirement to perform annual assessment work on mining claims, a petitioner must show that he was prevented from performance of the work by denial of access to the claims for the purpose of doing such work. Failure to show that one of the impediments to such performance listed by 30 U.S.C. § 28b (1982) prevented access to the mining claims requires rejection of a deferment application.

APPEARANCES: King G. McPherson, Esq., Nevada City, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Wheaton D. Blanchard has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated September 23, 1987, denying his petition for deferment of annual assessment work for the Manzanita group of mining claims, CA MC 180378 through CA MC 180383. On June 10, 1986, Wheaton D. Blanchard and Marion O. Blanchard relocated the Manzanita claims in Nevada County, California. On July 20, 1987, they filed a notice of intention to hold the claims and a petition for deferment of annual assessment work. The petition for deferment recites:

KEN ROUSE, SANDRA ROUSE, GENE ROUSE AND KATHY ROUSE have filed Placer location notices on February 26, 1986, over most of the same ground encompassed by the claims of Petitioners. On the 19th day of May, 1986, and again on the 14th day of May, 1987, Petitioners had their agent CONNER MCLUCKIE try to access onto the claims and access was denied by KEN ROUSE, who was armed and told MR. MCLUCKIE in no uncertain terms that he could not access onto

our mining claims. We have filed a lawsuit in Nevada County, California, requesting the Court to declare us to be the owners of the real property encompassed by the location notices CAMC Nos. 180378, 180379, 180380, 180381, 180382 and 180383, and to declare that the Defendants in that action (KEN ROUSE, SANDRA ROUSE, GENE ROUSE and KATHY ROUSE) have no right, title, estate or interest in the real property encompassed by our mining claims, nor in the mining claims themselves. A copy of said lawsuit is attached hereto marked Exhibit "A" and made a part hereof as if set forth in full herein. When MR. MCLUCKIE has gone to the claims on other occasions there has been a gate across the road and a lock on the gate. * * * The land over which the right-of-way must be obtained is Federal Government land over which KEN ROUSE, SANDRA ROUSE, GENE ROUSE and KATHY ROUSE have filed location notices. The lawsuit described above must be brought to a conclusion in order to determine who has the right of possession and title to the mining claims. [Emphasis in original.]

(Petition at 1, 2).

In response to Blanchard's petition for deferment filed on June 20, 1987, the California State Office, BLM, on August 10, 1987, requested additional evidence to show that access to the claims was denied, stating:

The mere fact that the claims are involved in litigation does not justify granting a deferment. The claimant must show that his right to enter upon the claims has been obstructed. Proof that access to the claims was obstructed must be furnished which could be in the form of witness statements that access was being denied by another claimant who was armed; or a court order.

(Letter decision dated Aug. 10, 1987, at 1).

Blanchard responded to this decision letter with an affidavit from an employee and from his attorney, and a copy of an order proposed to be issued by the local court in the pending action described by the deferment petition. The affidavit of Victor L. "Swede" Sweeter states that he travelled to the Manzanita claims in company with Conner McLuckie on May 14, 1987, "to remove * * * equipment" on behalf of Blanchard, and "was stopped by KEN ROUSE wearing a gun. Someone had removed MR. BLANCHARD's lock from the gate and replaced it with one of their own." Id. (Emphasis in original.)

The court document filed by Blanchard, entitled "order to show cause re preliminary injunction and temporary restraining order" is supported and explained by the affidavit filed by Blanchard's attorney, stating that, while the California court was asked to permit access to the claims to allow performance of assessment work, the court "only allowed WHEATON D. BLANCHARD * * * to inspect * * * equipment * * * and the Court did not allow MR. BLANCHARD to go on the claims to do any assessment work." (Emphasis in original.) The attorney's affidavit also explains that "I requested that neither claimants to the mining claims could go onto the claims and remove

any mineral except to do their required assessment work (Affidavit of King G. McPherson dated Aug. 24, 1987).

Examination of the document proposed by the attorney to the state court, exhibit A to the attorney's affidavit, does not support this last statement. While the defendants (the adverse claimants) would have been prohibited by the proposed order from any activity on the claims except assessment work, no mention of the performance of assessment work by Blanchard is made in exhibit A. The only action sought by Blanchard, pending trial of his possessory claims, according to exhibit A, is the right to enter to inspect the claims and mining equipment located on the claims. This exact proposal is carried through into a draft order granting temporary relief, which counsel for Blanchard states would become effective in the event Blanchard should furnish a \$25,000 bond to guarantee performance (Attorney's affidavit at 1).

Although it appears that no bond was ever posted, and therefore no order for temporary relief pending suit was ever issued, it also appears that Blanchard never asked for the protection of the state court to permit him to perform assessment work. It does, however, appear that he sought the court's assistance to obtain access to machinery located on the claims. On the record before us, therefore, it can only be said that Blanchard instructed his agents to seize mining equipment located on the claims, or failing to do so, to insure that the machinery remained intact on the claims pending resolution of the conflicting claims by Blanchard against the rival claimants who were in possession of the claims and the valuable equipment located thereon.

The affidavit of Victor L. Sweeter supports this analysis: he reported that he was sent to the disputed claims to "remove equipment" but was prevented from doing so. On appeal to this Board, Blanchard argues that the dealings concerning mining equipment that took place between Sweeter and Rouse should give rise to a "reasonable inference * * * that access would * * * be denied no matter what the purpose" (Statement of Reasons (SOR) at 1). It is therefore his position that he was not allowed to take possession of mining equipment, the ownership of which was disputed, and that this circumstance gives rise to a conclusion that he would also not have been allowed to perform assessment work on the disputed claims where the equipment was located.

Unless the obligation to perform annual assessment work is deferred, a mining claimant is required to perform \$100 worth of assessment work annually on each of his unpatented mining claims. 30 U.S.C. § 28 (1982); 30 U.S.C. § 28b (1982). Failure to perform the required work subjects the claim to relocation "as if no location * * * had ever been made." Id.

[1] Pertinent to this appeal, deferment of annual assessment work may be ordered by the Secretary

upon the submission * * * of evidence * * * that such * * * group of claims is surrounded by lands over which a right-of-way for the performance of such assessment work has been denied or is in litigation or is in the process of acquisition under State law or

that other legal impediments exist which affect the right of the claimant to enter upon
* * * such * * * group of claims.

30 U.S.C. § 28b (1982).

Implementing the statute, 43 CFR 3852.1 repeats, pertinently, the statutory admonition that

deferment may be granted where any * * * group of claims * * * is surrounded by lands over which a right-of-way for the performance of assessment work has been denied or is in litigation * * * or where other legal impediments exist which affect the right of the claimant to enter * * * such * * * group of claims.

It is clear that in this case a right-of-way for the performance of assessment was never denied, because none was ever sought. Furthermore, no right-of-way is in litigation or in process of acquisition.

Reading the record before us, the uncontradicted statement by Blanchard establishes that he was locked out of the Manzanita group of claims by a rival and that his effort to remove machinery from the claims was successfully resisted by that rival claimant in possession of the land. Nonetheless, Blanchard points out that following the ejection of his agents from the group of mining claims he commenced an action in state court to obtain judicial recognition of his possessory claim to the mining claims and the machinery. He contends, therefore, that because his claims are "in litigation" that he is entitled to a deferment under section 28b. He argues:

With the prior armed threats and with the lack of court protection, it is totally unreasonable to require MR. BLANCHARD to make further attempts to do his assessment work and incur bodily injury. MR. BLANCHARD has tried all reasonable steps to access the claims in order to perform his assessment work, including physically trying to access onto the claims and even seeking court protection so that he could access onto the claims. [Emphasis in original.]

(SOR at 2).

This argument is less than meets the eye. In making it, Blanchard seeks to distinguish our holding in Sadie Schoonover, 83 IBLA 133 (1984), where we held that a claimant who failed to enforce a court order permitting her to perform assessment work was not entitled to deferment of the statutory assessment work requirement. Here, Blanchard points out, he had obtained no such order as had Schoonover. Since, according to this thesis, there was no order to enforce, there can be no penalty for failure to enforce it, as there apparently was in the Sadie Schoonover situation. Therefore, this argument runs, the fact of litigation having been established, along with a showing that a rival is in possession of the group of claims, entitles Blanchard to deferment of the requirement that assessment work be performed.

Pending litigation to establish ownership of mining claims is not, however, in itself a legal impediment to access. Lyra-Vega II Mining Association, 91 IBLA 378, 381 (1986); Sadie Schoonover, supra; James W. MacGuire, 35 IBLA 117 (1978); Oliver Reese, 34 IBLA 103 (1978). An injunction against entry will support a deferment. Continental Oil Co., 36 IBLA 65 (1978). But in this case there is no injunction prohibiting Blanchard's entry, and, as Blanchard's SOR points out, the injunctive relief sought in this case was initiated by Blanchard for an entirely different purpose: the protection of mining equipment located on the claims. The only pending litigation, so far as is known, was commenced by Blanchard for purposes unrelated to performance of assessment work. The proceedings in state court described by Blanchard, whatever else they may be, are not a legal bar to performance of assessment work by him.

Appeals coming before this Board from rejections of deferment applications which seek relief from alleged threats of violence or physical danger said to be posed by rival claimants in possession have not generally met with success. In Don Hesselgesser, 39 IBLA 75 (1979), the Board, confronted with such an appeal, observed that "allegations that 'squatters' have * * * prevented his access to the claims in question by putting him in physical danger if he attempts to enter the claims" were not relevant to an application for deferment under 30 U.S.C. § 28b because such activity "does not constitute a 'legal impediment.'" Id. at 77.

Blanchard has therefore not shown that he is entitled to the relief sought. There is no suggestion in the record that any provision of the deferment statute might be relevant to this appeal, and the Board finds that there is no basis in fact for such a finding.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the California State Office is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

David L. Hughes
Administrative Judge