

GARY L. CARTER (ON RECONSIDERATION)

IBLA 94-383 Decided February 10, 1995

Petition for reconsideration of an order of the Board affirming the decision of the Montana State Office, Bureau of Land Management, declaring mining claims abandoned and void for failure to pay the annual rental fee.

Petition for reconsideration granted; order of the Board vacated; decision of BLM vacated; and case remanded. M MC 89489 to 89496.

1. Mining Claims: Abandonment–Mining Claims: Rental or Claim Maintenance Fees: Generally

When a check in payment of the mining claim rental fee is tendered by the due date and erroneously dishonored thereafter by the bank upon which it is drawn, the fee will be considered to have been timely tendered when bank officials acknowledge that the bank erred in not honoring the check when it was presented.

APPEARANCES: Daniel V. Grinnell, Esq., Novato, California, for petitioner.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Counsel for Gary L. Carter has filed a petition for reconsideration of our order of May 6, 1994, affirming the February 23, 1994, decision of the Montana State Office, Bureau of Land Management (BLM). The decision declared the above-identified mining claims abandoned and void for failure to pay by the statutory deadline of August 31, 1993, the \$100-per-claim annual rental fee for the assessment years ending September 1, 1993, and September 1, 1994, as required by the Department of the Interior and Related Agencies Appropriation Act for Fiscal Year 1993, P.L. 102-381, 106 Stat. 1374, 1378 (1992). The BLM decision explained that although a check in the amount of the rental fees (\$1,600) was received on August 31, 1993, the check was returned by the bank marked "uncollected fees" on September 8, 1993.

In deciding this case we noted that:

The law is clear that "for each unpatented mining claim * * * claimant shall * * * pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim * * * for the assessment year ending at

noon on September 1, 1993." 106 Stat. 1378. A similar requirement to pay a \$100 per claim annual rental fee by August 31, 1993, is imposed for the following assessment year. Id. The statute expressly provides that "failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim * * * by the claimant." 106 Stat. 1379. Responsibility for meeting the rental fee requirements of the statute rests with the owner of unpatented mining claims and, in the absence of a small miner exemption, an unpatented mining claim is properly declared abandoned and void where there is no evidence of timely payment of the annual rental fee. Lee H. and Goldie E. Rice, 128 IBLA 137 (1994).

With regard to the dishonored check tendered to BLM for the annual rental fees, Departmental precedent is clear that submission of a check which is not honored by the bank does not constitute payment. Twin Arrow, Inc., 118 IBLA 55, 58 (1991). An exception to the rule for checks dishonored as a result of bank error has been recognized. See, e.g., Duncan Miller, 70 I.D. 113 (1963). However, this exception has been limited to situations where bank officials have acknowledged that the bank erred in failing to honor the check. Twin Arrow, Inc., 118 IBLA at 58. The statements of bank officials filed in this case indicate that this is not the case.

In support of the petition for reconsideration, counsel for appellant asserts that the Board misinterpreted a prior letter from the bank and that the bank in fact has acknowledged that it "erred in returning the check unpaid." Further, petitioner has submitted additional evidence in the form of an affidavit signed by an official of petitioner's bank familiar with the deposits made to the credit of petitioner's account indicating that the bank erred in failing to approve payment of the dishonored check when it was presented.

[1] The Department has held that, when a check in payment of a fee is tendered by the due date but erroneously dishonored subsequently by the bank on which it is drawn, the fee will be considered to have been timely tendered where bank officials acknowledge that the bank erred in not honoring the check when presented. Duncan Miller, supra. ^{1/} This precedent has been followed by the Board which has held that the mere allegation of bank error without corroboration by a bank official is insufficient to show a timely tender of fees. Duncan Miller, 16 IBLA 379, 380-381 (1974). In applying this bank error doctrine a statement from a bank representative indicating that checks were dishonored because the drawer used outdated

^{1/} This result was expressly conditioned upon resubmission of the fee to BLM by the appellant. 70 I.D. at 118.

checks was found insufficient to establish a timely tender of fees in the absence of an acknowledgement of bank error. Twin Arrow, Inc., 118 IBLA at 58.

Upon our initial review of the evidence presented in this case, we were not persuaded that bank error had been established. However, counsel for appellant has supplemented the record in submission of the petition for reconsideration. Specifically, an affidavit of a bank vice president who investigated the facts has been submitted in which it is acknowledged that "it was thus an error by the Bank of America to return check number 2797 unpaid." Under these circumstances, we find that the threshold recognized in Twin Arrow has been crossed and that the dishonor of the check tendered by petitioner is properly attributed to bank error. A petition for reconsideration may be granted only in extraordinary circumstances where in the judgement of the Board good reason is shown therefor. 43 CFR 4.21(c); 43 CFR 4.403. On the basis of newly presented evidence, we find that good reason for reconsideration has been shown. Accordingly, the petition for reconsideration is granted, the BLM decision as well as the prior Board order affirming that decision is vacated, and the case is remanded to BLM to allow reinstatement of the claims upon prompt tender of payment of the fees within 60 days of the date of this decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is granted, the prior Board order affirming the BLM decision is vacated, the decision appealed from is vacated, and the case is remanded to BLM.

C. Randall Grant, Jr.
Administrative Judge

I concur.

Franklin D. Amess
Administrative Judge