

JOHN E. BAXTER

IBLA 94-361

Decided February 6, 1997

Appeal from a decision of the California State Office, Bureau of Land Management, declaring the unpatented Commetti Placer mining claim abandoned and void by operation of law. CAMC 239232.

Affirmed.

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

An applicant for a small miner exemption from payment of rental fees under the Act of Oct. 5, 1992, had to file a certified statement on or before Aug. 31, 1993, for each of the assessment years (ending Sept. 1, 1993, and Sept. 1, 1994) for which the exemption was claimed including the information required by regulation at 43 CFR 3833.1-7(d) (1993). Where the applicant failed to pay the rental fee for either of the assessment years, the certificate of exemption includes only 1 year, and the record fails to indicate operations are being conducted pursuant to a notice or plan of operations, the claim is properly deemed abandoned and void.

APPEARANCES: John E. Baxter, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

John E. Baxter appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated March 3, 1994, declaring his Commetti Placer mining claim, CAMC 239232, abandoned and void for failure to pay annual rental fees or to qualify for exemption from the rental fee. The BLM decision gave two reasons for its finding that this claim was abandoned and void. First, BLM stated that the claimant failed to file on or before August 31, 1993, the certificate of exemption necessary to qualify for an exemption from the rental fee requirement for the assessment year ending September 1, 1994, although BLM acknowledged receipt of a certification of exemption for payment of the rental fee for the assessment year ending September 1, 1993 (filed August 30, 1993).

Further, BLM held that appellant had not established compliance with the statutory and regulatory requirement to have a valid notice or plan of operations for the claim. See 43 CFR 3833.1-6(a)(4) (1993).

In his statement of reasons for appeal, appellant asserts that he sent the certificate of exemption from rental payment for the 1994 assessment year together with the documents for the 1993 assessment year in the same envelope via Federal Express, but BLM only acknowledged receipt of documents pertaining to the 1993 assessment year. With his statement of reasons, appellant forwarded photocopies of six numbered pages he states he sent together to BLM. Photocopies of the three pages that he states BLM acknowledged, applicable to the 1993 assessment year, are numbered "Baxter Record" 638-1, 638-2, and 638-6. The other pages, applicable to the 1994 assessment year, are numbered 638-3, 638-4, and 638-5. He also forwarded a photocopy of a BLM receipt for \$20, dated September 3, 1993 (Baxter Record 674-1).

[1] The Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), P.L. 102-381, 106 Stat. 1374, 1378-79 (1992), imposed a rental fee requirement for mining claims for each of the assessment years ending September 1, 1993, and September 1, 1994. Specifically, the Act required:

[F]or fiscal year 1993, for each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28-28e), and the filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, 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, mill or tunnel site for the assessment year ending at noon on September 1, 1993 * * *.

106 Stat. 1378. The Act contained a similar provision establishing rental fees for the assessment year ending at noon on September 1, 1994, requiring payment of an additional \$100 rental fee for each claim on or before August 31, 1993. 106 Stat. 1378.

The statute allowed only one type of exemption from the rental fee requirements for these assessment years, the small miner exemption available to claimants holding 10 or fewer claims on Federal lands who were, *inter alia*, producing or performing exploration work "under a valid notice or plan of operation." 106 Stat. 1378-79. To obtain a small miner exemption, a claimant had to meet all the conditions set forth in 43 CFR 3833.1-6(a) (1993). A claimant had to apply for the small miner exemption by filing separate certificates of exemption on or before August 31, 1993, supporting the claimed exemption for each assessment year claimed. 43 CFR 3833.1-7(d) (1993). This Board has held that in the absence of payment of

The annual rental fee, the statute and the implementing regulations clearly required a timely filing, on or before August 31, 1993, of certificates of exemption for both assessment years (ending September 1, 1993, and September 1, 1994), referencing the notice or plan of operations under which exploration was conducted. Edwin L. Evans, 132 IBLA 103, 106 (1995); see 43 CFR 3833.1-7(d) (1993). When a claimant fails to qualify for a small miner exemption from the rental fee requirement, failure to pay the rental fee in accordance with the Act and the regulations results in a conclusive presumption of abandonment. William B. Wray, 129 IBLA 173, 175 (1994); Lee H. and Goldie E. Rice, 128 IBLA 137, 141 (1994); 43 CFR 3833.4(a)(2) (1993).

The BLM decision acknowledged receipt of appellant's certification of exemption for payment of the rental fee for the 1993 assessment year, which was stamped "received" on August 30, 1993. However, the BLM case file does not contain a certification of exemption for the assessment year ending September 1, 1994, bearing a date stamp reflecting receipt on or before August 31, 1993. The fact that documents are not found in the BLM case file for the mining claim raises the inference that they were not filed with BLM, since there is a presumption that BLM employees have properly discharged their official duties and thus have not lost or misplaced legally significant documents. See Wilson v. Hodel, 758 F.2d 1369, 1372 (10th Cir. 1985); H.S. Rademacher, 58 IBLA 152, 155, 88 I.D. 873, 875 (1981). That presumption may be rebutted by substantial evidence tending to show receipt of the document in question by the appropriate BLM office, but the party seeking to establish that a filing did occur must demonstrate by a preponderance of the evidence that the document was actually filed with BLM. See H.S. Rademacher, *supra* at 155-56, 88 I.D. at 875-76.

Appellant has failed to rebut the presumption in this case. Appellant has provided photocopies of the documents that he states he filed with BLM. The alleged copy of the exemption certificate for 1993 is not an exact copy of the document filed with BLM. First, the copy contains a reference to "Notice of Intent No. 33052." That reference does not appear on the BLM case record filing. Second, the case record filing is notarized; the copy is not. The fact that appellant may have filled out an exemption certificate for 1994 and that he has a copy of it in his files does not establish that he timely filed it with BLM. Appellant has provided no evidence to show timely filing of the 1994 exemption certificate.

Moreover, even assuming that appellant could establish that he timely filed the 1994 exemption certificate, he has not alleged and the record fails to show that the claim was under a notice or plan of operations on August 31, 1993. In order to qualify for a small miner exemption, a mining claimant must be producing or exploring "under a valid notice or plan of operation." 106 Stat. 1378-79. Appellant needed to have this claim under a notice or approved plan of operations on August 31, 1993. See 43 CFR 3833.1-6(a)(4) (1993); Ronald E. Milar, 133 IBLA 214, 217-18 (1995); Edwin L. Evans, *supra* at 106. The BLM decision stated "according to the records at the Inyo National Forest, Mt. Whitney Ranger District, as of

August 31, 1993, the claimant's Plan of Operations for the subject mining claim had not been approved for the assessment year ending September 1, 1993." Because the claimant had not complied with 43 CFR 3833.1-6(4), requiring that he be under a notice or plan prior to August 31, 1993, BLM concluded that appellant did not qualify for a small miner exemption for either assessment year, 1993 or 1994.

Appellant does not address this second holding in his statement of reasons for appeal. The case record contains no indication that appellant submitted notice of intention to operate to the U.S. Forest Service or obtained Forest Service approval of any plan of operations. See 36 CFR 228.4(a). The only reference to a plan of operations in the case record pertains to other claims belonging to appellant and indicates that a plan of operations was not approved until October 29, 1993. Thus, appellant has not shown that he was producing or exploring the claim at issue in this appeal "under a valid notice or plan of operation." 106 Stat. 1378-79.

Where a mining claimant fails to qualify for a small miner exemption from the rental fee requirement, failure to pay the fee in accordance with the Act and regulations results in a conclusive presumption of abandonment. Lee H. and Goldie E. Rice, supra at 141. The Department is without authority to excuse lack of compliance with the rental fee requirement of the Act, to extend the time for compliance, or to afford any relief from the statutory consequences, and the Board may not consider special facts or provide relief from the statutory consequences. Lester W. Pullen, 131 IBLA 271, 273 (1994).

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.

C. Randall Grant, Jr.
Administrative Judge

I concur.

Bruce R. Harris
Deputy Chief Administrative Judge

