

JOHN & MARLENE CHRISSINGER

IBLA 94! 470

Decided March 31, 1997

Appeal from a Decision of the Montana State Office, Bureau of Land Management, declaring 10 lode mining claims abandoned and void for failing to timely pay rental fees or seek an exemption from payment. M MC! 52061, et al.

Reversed.

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

Where, in lieu of paying the rental fees required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, Pub. L. No. 102! 381, 106 Stat. 1378! 79 (1992), and its implementing regulations, the holder of an unpatented mining claim seeks an exemption from payment by mailing applicable certificates for the 1993 and 1994 assessment years to BLM's regular post office box 4 days prior to the Aug. 31, 1993, due date, they will be deemed to have been filed timely where they are presumed, absent any evidence to the contrary, to have been placed in the BLM post office box and available for pick! up by BLM during normal business hours on that date. A BLM decision declaring a mining claim abandoned and void for failing to comply with the Act and its implementing regulations, in these circumstances, will be reversed.

APPEARANCES: John and Marlene Chrissinger, pro sese.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

John and Marlene Chrissinger have appealed from a Decision of the Montana State Office, Bureau of Land Management (BLM), dated April 28, 1994, declaring 10 lode mining claims 1/ abandoned and void, by operation

1/ This case involves the following 10 claims, all of which were located on national forest lands situated in secs. 24 and 25, T. 22 N., R. 32 W., Principal Meridian, Sanders County, Montana: Kris No. 28 (M MC-52061), Kris No. 27 (M MC-77387), Kris No. 29 (M MC-77388), Kris No. 31 (M MC-77389), Kris No. 33 (M MC-77390), Kris No. 35 (M MC-77391), Kris No. 37 (M MC-77392), Kris No. 39 (M MC-77393), Kris No. 41 (M MC-77394),

of law, because the Claimants had failed to comply with the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Appropriations Act), Pub. L. No. 102! 381, 106 Stat. 1378! 79 (1992), and its implementing regulations, 43 C.F.R. §§ 3833.1! 5 through 3833.1! 7 (1993), by either paying a \$100 per claim rental fee or filing a certificate of exemption from payment for the 1993 and 1994 assessment years on or before August 31, 1993. In its Decision, BLM advised that the 1993 and 1994 exemptions forms for the claims, which were received on September 1, 1993, were not considered to be timely filed.

The Appropriations Act, enacted on October 5, 1992, provided, in pertinent part, that:

[F]or each unpatented mining claim, mill or tunnel site on [F]ederally 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[.] [Emphasis added.]

106 Stat. 1378 (1992). The Appropriations Act also contained an identical provision establishing rental fees for the following assessment year ending at noon on September 1, 1994, which required payment of an additional \$100 rental fee for each claim on or before August 31, 1993. 106 Stat. 1378! 79 (1992). Implementing Departmental regulations provided, in pertinent part, as follows:

Mining claim or site located on or before October 5, 1992. A nonrefundable rental fee of \$100.00 for each mining claim, mill site, or tunnel site, shall be paid on or before August 31, 1993, for each of the assessment years beginning on September 1, 1992, and September 1, 1993, or a combined rental fee of \$200.

43 C.F.R. § 3833.1! 5(b) (1993).

fn. 1 (continued)

and Kris No. 43 (MMC-77395). The Kris No. 28 claim was located on July 28, 1979, and filed for recordation with BLM on Oct. 24, 1979, pursuant to § 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1994). The remaining nine claims were all located on May 8, 1981, and filed for recordation with BLM on Aug. 5, 1981.

The only exception provided from this rental fee requirement was the "small miner" exemption, available to claimants holding 10 or fewer claims on Federal lands, who also satisfied the other requirements of the statute, 106 Stat. 1378! 79 (1992), and its implementing regulations, 43 C.F.R. §§ 3833.1! 6 and 3833.1-7 (1993). Ronald E. Milar, 133 IBLA 214, 217 (1995). Under those regulations, in order to obtain an exemption, a claimant must first have filed, on or before August 31, 1993, a certificate of exemption as to each claim and each assessment year for which he sought an exemption. 43 C.F.R. §§ 3833.1! 7(b) and (d) (1993).

Finally, the Appropriations Act provided that "failure to make the annual payment of the claim rental fee as required by th[e] Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant." 106 Stat. 1379 (1992); see also 43 C.F.R. § 3833.4(a)(2) (1993). Thus, when a claimant failed to properly obtain a small miner exemption from the rental fee requirement, the failure to pay those fees in accordance with the Appropriations Act necessarily resulted in a conclusive presumption of abandonment. Chester Wittwer, 136 IBLA 96, 99 (1996), and cases cited therein.

It is undisputed that the Chrissingers did not pay rental fees for any of the 10 claims, but rather sought to comply with the Appropriations Act and its implementing regulations by applying for an exemption from payment by filing two certificates of exemption for the 1993 and 1994 assessment years. The Chrissingers explain, in their Statement of Reasons for Appeal (SOR), that they sought to comply as follows:

Said document was mailed from Reno, Nevada on the 27th of August 1993 ! a Friday * * *. The afternoon of August 31 allowed five days time for the document to get to Billings, Montana. This, in my mind, was a timely mailing. It is not my fault that it took six days to get to Billings[.] * * * [Y]ou will [also] note that the document was put in the Post Office Box and not delivered directly to the Bureau. It is my opinion that the document was at the Post Office on [the] 31[st of] August in order for it to be picked up by the Bureau on the 1st of September.

The Chrissingers conclude that they "should not be penalized because the United States Post Office failed to perform in delivery of the document in a timely fashion."

The record, as supplemented by the Chrissingers on appeal, supports the following facts. The Chrissingers signed and mailed, by certified mail, return receipt requested, the certificates of exemption for the 1993 and 1994 assessment years from Reno, Nevada, on August 27, 1993. This is substantiated by the fact that the envelope that contained the certificates bears a U.S. Postal Service certified mail receipt sticker with the number P 187 788 079, and that the Chrissingers have submitted a copy of the corresponding "Receipt for Certified Mail" (SOR, "Attachment B"),

which was date! stamped by the U.S. Postal Service on August 27, 1993. The envelope containing the certificates was addressed to the BLM State Office in Billings, Montana, using both its street address (222 N. 32nd Street) and its post office box (P.O. Box 36800). However, the zip code used by the Chrissingers was that for the post office box (59107) and not for the street address (59101). 2/ Further, the envelope was received at the post office box, as demonstrated by a copy of the back of the return receipt card (SOR, "Attachment C"), which bears the same certified mail receipt number. In the space marked "Signature (Addressee)" on the card, there is a stamp that reads "P.O. Box 36800, Billings, M[ontana]." The space marked "Date of Delivery" contains the handwritten notation "9/1." In addition, both the envelope and exemption certificates are date! stamped as received by BLM at 9 a.m. on September 1, 1993.

[1] The Appropriations Act required that the rental fees be "pa[id] * * * to the Secretary of the Interior or his designee on or before August 31, 1993," or that, in lieu thereof, eligible claimants, for the 1993 and 1994 assessment years, do the assessment work required by the Mining Law of 1872, file evidence of having done so (as required by section 314(a) of FLPMA), and "certify the performance of such assessment work to the Secretary by August 31, 1993." 106 Stat. 1378, 1379 (1992). Implementing regulations, which were promulgated effective July 15, 1993, 58 Fed. Reg. 38185 (July 15, 1993), in turn provided that such certifications, which must also contain statements supporting the claimant's qualifications for exemption, shall be "file[d]" with BLM "on or before August 31, 1993." 43 C.F.R. § 3833.1! 7(d) (1993). "File or filed" was further defined as "being received and date stamped by the proper BLM office." 43 C.F.R. § 3833.0! 5(m) (1993). Thus, it was not sufficient that the Chrissingers mailed the required certificates on or before August 31, 1993. 3/ Kathleen K. Rawlings, 137 IBLA at 370, 373.

2/ The Chrissingers properly addressed the envelope since they were required to file the certificates with the BLM State Office at the address listed in 43 C.F.R. § 1821.2! 1(d) (1993). 43 C.F.R. §§ 3833.0! 5(g) and (m) (1993). That address contained both the street address and the post office box, but the zip code only for the latter.

3/ We further concluded in Rawlings that the 15! day grace period, also provided by 43 C.F.R. § 3833.0! 5(m) (1993), did not apply in the case of rental fee payments and exemption certificate filings made pursuant to 43 C.F.R. §§ 3833.1! 5 and 3833.1! 7 (1993), because the regulation specifically excluded them from its ambit. Kathleen K. Rawlings, 137 IBLA 368, 371, 372 (1997). Thus, for purposes of compliance with the Appropriations Act and its implementing regulations, it would not suffice that the Chrissingers "mailed [their exemption certificates] to the proper BLM office * * * in an envelope clearly postmarked by the United States Postal Service within the period prescribed by law [i.e., on or before Aug. 31, 1993] and [they were then] received by the proper BLM office within 15 calendar days subsequent to such period," in accordance with 43 C.F.R. § 3833.0! 5(m) (1993).

Nonetheless, we conclude that the present case is controlled by our decision in Washington Chromium Co., 60 IBLA 378 (1981), and as such the Chrissingers will be deemed to have complied with the Appropriations Act and its implementing regulations. That case involved a BLM decision similarly declaring unpatented mining claims abandoned and void because the claimant had failed to file evidence of annual assessment work on or before December 30, 1980, as required by section 314(a) of FLPMA and 43 C.F.R. § 3833.2! 1 (1980). While the evidence was not received and date! stamped by BLM, and thus "filed" with BLM within the meaning of 43 C.F.R. § 3833.1! 2 (1980), until December 31, 1980, 1 day late, we reversed BLM. We did so because the record demonstrated that the evidence of annual assessment work was mailed, properly addressed and with postage properly prepaid, from Auburn, Washington, to BLM's regular post office box in Portland, Oregon, on December 27, 1980, a Saturday, and was presumed in the ordinary course of the mails, absent any evidence to the contrary, to have been placed in that box before 4:15 p.m. on December 30, 1980, a Tuesday, *i.e.*, during the time that the BLM office to which the mail was addressed was open for filing. ^{4/} Washington Chromium Co., 60 IBLA at 380. In these circumstances, we further held that the evidence was deemed to have been timely filed with BLM on December 30, 1980, regardless of the fact that BLM did not actually take delivery until the next day, because it was available for pick! up by BLM during the hours that its office was open for filing on that date. *Id.* at 381.

We conclude that our holding in Washington Chromium is justifiably invoked here since, in both cases, the filing requirement, applicable to the holders of unpatented mining claims, is similar and the consequence of a failure to file timely, *i.e.*, voiding the applicable claim, is the same. *See Lee H. Rice*, 128 IBLA 137, 141 (1994). The present record establishes that the Chrissingers mailed the required exemption certificates from Reno, Nevada, in an envelope properly addressed and with the postage properly prepaid, to BLM's regular post office box in Billings, Montana, on August 27, 1993, a Friday, 4 days before the August 31, 1993, deadline. We presume, in the absence of any evidence to the contrary, that, in the ordinary course of the mails, the certificates travelled from Reno to Billings, and were placed in BLM's post office box at least before the State Office closed for filing at 4:30 p.m. on August 31, 1993, a Tuesday. Further, this was clearly the case since the certificates were picked up and date! stamped as received by BLM at 9 a.m. on September 1, 1993, before any additional mail would have been delivered to the post office and placed in BLM's box on that day. Moreover, because the certificates were available for pick! up by BLM during the hours that its

^{4/} In so holding, we relied on the well! established rule that the deposit of a document, properly addressed and with postage properly prepaid, in the post office creates a rebuttable presumption that the document was received by the addressee in the ordinary course of the mails. Washington Chromium Co., 60 IBLA at 380, and cases cited therein.

office was open for filing on August 31, 1993, we conclude that they are deemed to have been filed with BLM on that date, and thus the Chrissingers satisfied the Appropriations Act and its implementing regulations.

We, therefore, conclude that BLM, in its April 1994 decision, improperly declared the 10 lode mining claims abandoned and void for failure to properly maintain the claims under the Appropriations Act and its implementing regulations, and its Decision will be reversed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is reversed.

Gail M. Frazier
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

