

CHERYL JONG

IBLA 97-321

Decided December 19, 1997

Appeal from a Decision of the Alaska State Office, Bureau of Land Management, declaring placer mining claims forfeited and void. FF-35402 et al.

Reversed.

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

Mining claims for which maintenance fees were paid for the 1996 assessment year were not properly declared forfeited and void for failure to certify performance of assessment work before Dec. 30, 1996, because, following payment of the required fees, no assessment work was required.

APPEARANCES: Cheryl Jong, Nome, Alaska, pro se; Karen Hawbecker, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, DC, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Cheryl Jong has appealed from a March 13, 1997, Decision of the Alaska State Office, Bureau of Land Management (BLM), declaring nine placer mining claims (FF-35402 through FF-35410), forfeited and void by operation of law under the Act of August 10, 1993, 30 U.S.C. §§ 28i through 28k (1994) (Act). The Decision found that Jong, who did not pay claim maintenance fees required by the Act for the 1997 assessment year, but did timely file a fee waiver certificate on August 26, 1996, had failed to file a required affidavit of performance of annual assessment work for the nine claims by December 30, 1996. It was determined that, under the Act, an assessment affidavit was required to be filed before December 31, 1996; when this requirement was not met, BLM found, the claims were forfeited and void. We conclude that this finding was made in error, and reverse the Decision here under review.

The claims are in the Bering Land Bridge National Monument. Jong contends that the Decision under review misconstrues BLM regulations governing fee waivers for small miners and rules provided for mining claim operations administered by the National Park Service (NPS). She argues that, while she was unable to perform assessment work for the 1997 assessment year as required by 30 U.S.C. § 28f(d)(1)(B) (1994), she nonetheless qualified for fee waiver because the operation of NPS regulation 36 C.F.R. § 9.7(b)(2) hampered her performance of the required work.

The record on appeal shows that Jong filed a mining plan of operations with NPS for the nine claims presently at issue and others on November 2, 1992. On March 16, 1994, NPS took action on her proposal, but did not approve operations on the nine claims at issue, which were then owned by N.B. Tweet and Sons. Claim maintenance fees were paid for the nine claims when they were deeded to Jong in 1994. In 1995, although Jong filed a small miner waiver certificate for the claims, maintenance fees were also paid for the 1996 assessment year. On August 26, 1996, Jong again filed a waiver certificate, but fees for the 1997 assessment year were not paid before the August 31 deadline. On December 11, 1996, Jong filed a statement with BLM stating an intention to hold the claims, wherein she admitted she had not performed assessment work on them in 1996. The claims were then declared void.

Failure to pay claim maintenance fees or file a certification for waiver of payment on or before August 31, 1996, for the 1997 assessment year, voids affected claims by operation of law. 30 U.S.C. § 28i (1994); 43 C.F.R. § 3833.4(a)(2); see Harlow Corp., 135 IBLA 382, 385 (1996). Claimants who do not pay maintenance fees are not excused from performance of annual assessment work required by 43 U.S.C. § 1744 (1994). See Dale J. LaCrone, 135 IBLA 203, 208 (1996).

[1] Nonetheless, Jong contends that she was excused from performance of assessment work. We find her contention to be correct, because she paid, in advance during 1995, the required fee for assessment year 1996; consequently, under provision of 30 U.S.C. § 28f (1994), she was excused from the work requirement for the 1996 assessment year. On August 26, 1996, when she filed her small miner waiver certification, there was no assessment work required to be done for the assessment year ending on September 1, 1996. While Departmental regulations 43 C.F.R. §§ 3833.2-1 and 3833.3-4 punish failure to make required filing by December 30 with forfeiture, after waiver certification is filed, those rules do not apply to require proof of assessment work in cases where no assessment work is required. This is such a case. It is therefore concluded that, since no affidavit of assessment work was required to be filed by Jong with BLM before December 31, 1996, the nine claims at issue were not properly declared forfeited because she did not file such proof.

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.

Franklin D. Amess
Administrative Judge

I concur.

C. Randall Grant, Jr.
Administrative Judge

