

DEBBEE HOSKO

IBLA 2002-26

Decided November 5, 2002

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring mining claims forfeited and void by operation of law. UMC 367561, etc.

Affirmed.

1. Evidence: Presumptions--Evidence: Sufficiency--Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

In the absence of any evidence in the case file that a mining claim fee waiver certification was received by BLM, the legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them will support a finding that the document was not timely filed. Although the presumption is rebuttable by evidence to the contrary, a statement that a document was enclosed in the same envelope with other documents that were received by BLM must be corroborated by other evidence.

APPEARANCES: Debbie Hosko, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Debbie Hosko has appealed from a September 28, 2001, decision of the Utah State Office, Bureau of Land Management (BLM), declaring seven placer mining claims forfeited and void by operation of law. The decision was based on a finding, with respect to each claim, that claimant had failed to either pay a \$100 claim maintenance fee or file a waiver (or small miner exemption) certification for the 2002 assessment year, on or before September 1, 2001, as required by section 10101 of the Omnibus Budget Reconciliation Act of 1993 (Omnibus Act), as amended, 30 U.S.C. § 28f (2000), and 43 CFR 3833.1-5(b) and 3833.1-7(d). 1/

1/ The claims at issue here are the Duckie No. 2, Little Foot No. 4, Petrie No. 1, Spike No. 3, Future, Past, and Present, UMC-367561 through UMC-367564 and UMC-367586 through UMC-367588.

The seven mining claims at issue here were located by Hosko on September 20, and December 13, 2000, in T. 29 S., R. 24 E., Salt Lake Meridian, San Juan County, Utah. Copies of the original location notices were filed for recordation with BLM on December 4, and 29, 2000, as required by section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1994). Hosko also complied with section 10101 of the Omnibus Act, as amended, by submitting a \$100 claim maintenance fee for the 2001 assessment year, with respect to each of the seven claims, on December 4, 2000. In addition, on August 27, 2001, she filed a Proof of Labor with respect to all of the claims, for the 2001 assessment year, as required by section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1994). The record, however, fails to demonstrate compliance with the requirement to file either a maintenance fee of \$100 per claim or a waiver certification by September 1, 2001, for the 2002 assessment year.

Under section 10101 of the Omnibus Act, as amended, a mining claimant is required to "pay to the Secretary of the Interior, on or before September 1 of each year for years 1999 through 2001, a claim maintenance fee of \$100 per claim." 30 U.S.C. § 28f(a) (2000). However, also under section 10101 of the Omnibus Act, as amended, payment of the annual claim maintenance fee "may be waived" where the claimant

certifies in writing to the Secretary that on the date the payment was due, the claimant and all related parties * * * held not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands; and * * * have performed assessment work required under the Mining Law of 1872 (30 U.S.C. 28-28e) to maintain the mining claims held by the claimant and such related parties for the assessment year ending on noon of September 1 of the calendar year in which payment of the claim maintenance fee was due. [Emphasis added.]

30 U.S.C. § 28f(d) (2000).

Regulations implementing section 10101 of the Omnibus Act, as amended, specifically require a claimant to "file" a waiver certification on or before September 1 each year. 43 CFR 3833.1-7(d). The term "file" is generally defined as "being received and date stamped by the proper BLM office." 43 CFR 3833.0-5(m). Failure to pay the claim maintenance fee, absent the filing of a waiver certification, "shall conclusively constitute a forfeiture of the unpatented mining claim * * * by the claimant and the claim shall be deemed null and void by operation of law." 30 U.S.C. § 28i (2000); 43 CFR 3833.4(a) (2).

In its September 2001 decision, BLM declared the seven mining claims at issue here forfeited and void because, upon review of its records, neither maintenance fees nor a waiver certification for the

claims was filed by September 1, 2001. (Decision at 1.) Hosko appealed from BLM's September 2001 decision. In conjunction with her appeal, she petitioned for a stay of the effect of the decision, pending a resolution of her appeal by the Board, pursuant to 43 CFR 4.21. Because we here decide the appeal, appellant's stay petition is denied as moot.

In her notice of appeal/statement of reasons for appeal (NA/SOR), appellant does not dispute the fact that BLM's records do not contain \$100 claim maintenance fees or a waiver certification, with respect to her seven claims, for the 2002 assessment year. Rather, she asserts that a certification was mailed to BLM in the same envelope with her Proof of Labor for the 2001 assessment year, which was received by BLM on August 27, 2001, prior to the September 1, 2001, deadline for receipt of the maintenance fee or waiver certification. Appellant asserts the waiver certification must have been "misplaced or lost" by BLM: "All this is due to [a misplaced or] lost document[] on BLM[']s part not mine." (NA/SOR at 1.) Hosko provides a copy of her certification obtained from her files which refers to all seven claims. The certification is signed by her and bears a handwritten date of "8-7-01" marked at the upper right corner of the page. (NA/SOR at 1; Maintenance Fee Waiver Certification attached to NA/SOR.) Hosko also contends that, in any event, upon failing to receive all of the documents sent by her, BLM should have contacted her before September 1, 2001: "If I had been notified, I would have re-sent whatever was needed and corrected the problem." (NA/SOR at 1.)

In addressing appellant's appeal, we start with the fact that the deadline for either paying the \$100 claim maintenance fee or filing the waiver certification, with respect to each claim, for the 2002 assessment year was September 1, 2001. That deadline was established by statute and regulation. 30 U.S.C. § 28f(a) (2000); 43 CFR 3833.1-5(b) and 3833.1-7(d); Otto Adams, 155 IBLA 1, 3 (2001).

Appellant chose to file a waiver certification for the 2002 assessment year, rather than pay the \$100 claim maintenance fee, with respect to each claim. However, she has provided no direct evidence that her certification was actually received by BLM on or before the September 1, 2001, deadline. 43 CFR 3833.1-7(d). The copy of the certification attached to her appeal is date-stamped as having been received by BLM on October 18, 2001, at the time the appeal was filed. Rather, the only evidence offered by appellant that she filed her certification with BLM on or before September 1, 2001, is her assertion that it was included in the same envelope with her proof of labor for the 2001 assessment year which was received before September 1.

[1] There is a legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them and, hence, the absence of timely date-stamped documents from the record will support a finding that the documents were not timely filed. This presumption may, however, be

rebutted by probative evidence to the contrary. Darrell Palmer, 156 IBLA 360, 362 (2002); John and Linda Nelson, 156 IBLA 195, 199 (2002); H. S. Rademacher, 58 IBLA 152, 155, 88 I.D. 873, 875 (1981). This means that the burden of proof is shifted to the appellant to provide evidence that a filing was timely made and thereby rebut the presumption of administrative regularity. Darrell Palmer, 156 IBLA at 362. A statement that a document was enclosed in the same envelope together with other documents that were received by BLM must be corroborated by other evidence to establish filing where there is no evidence of receipt of the document in the file. Darrell Palmer, 156 IBLA at 362-63; R. E. Frasch, 69 IBLA 66, 69 (1982); see Wilson v. Hodel, 758 F.2d 1369, 1374-75 (10th Cir. 1985); John C. Schandelmaier, 138 IBLA 36, 39 (1997); H. S. Rademacher, 58 IBLA at 155-57, 88 I.D. at 875-76. Appellant's uncorroborated assertion that she, with the assistance of Harrison, sought to file the certification with BLM on or before September 1, 2001, along with filing her proof of labor, will not suffice to demonstrate that she in fact did so. 2/

Rather, this case is closely analogous to the numerous cases where the Board has determined that the appellant failed to overcome the presumption that a required document was not filed with BLM, based on the uncorroborated assertion that it was mailed to BLM along with another document which was undeniably received by BLM: "[W]hile it is not doubted that a submission was made, there is no evidence that the particular document was included where multiple documents are involved." S. H. Partners, 80 IBLA 153, 155 (1984). As we said in James L. Gleave, 112 IBLA 281, 285 (1990), which involved the appellant's failure to file affidavits of assessment work or a notice of intent to hold his claims, as required by section 314(a) of FLPMA:

Nor do any of appellant's other submissions support a different conclusion [regarding timely receipt of the required documents]. * * * There was no cover letter detailing a list of documents filed, nor was there any identification on the face of the return receipt card delineating the documents included therein. There is, in short, simply insufficient evidence in the instant case to overcome the presumption of regularity and establish that the required proofs of assessment work performed accompanied the original filings [of copies of notices of location] with BLM.

See Norman A. Whittaker, 89 IBLA 224, 226 (1985); Ralph C. Memmott, 88 IBLA 372, 375 (1985); Neal R. Foster, 88 IBLA 296, 298-99 (1985); Cascade Energy & Metals Corp., 87 IBLA 113, 114-17 (1985); Don C. Tracy, 65 IBLA 160, 163 (1982); H. S. Rademacher, 58 IBLA at 157, 88 I.D. at 876; Harwell Mining Co., 56 IBLA 236, 238-39 (1981). Despite appellant's belief

2/ Appellant indicates that William V. Harrison assisted her in "filing all the paperwork," although she was present "when he sent the documents." [NA/SOR at 1.]

the waiver certification was sent by William Harrison on her behalf to BLM along with the proof of labor, there is nothing in the file to indicate that a waiver certification was enclosed in the mailing. There was no cover letter or any other indication connected with the mailing concerning what was contained in the envelope. ^{3/} Thus, appellant has failed to corroborate her assertion that the waiver certification was included in the envelope. Accordingly, we are unable to find in this case that the waiver certification was actually received by BLM on or before September 1, 2001.

Therefore, 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 and appellant's petition to stay the effect of the decision is denied as moot.

C. Randall Grant, Jr.
Administrative Judge

I concur:

R.W. Mullen
Administrative Judge

^{3/} Although appellant would seek to impose a duty on BLM to contact her regarding the missing waiver certification, there was no indication in the mailing of the documents included in the envelope from which BLM might discern that the waiver certification was missing or that it was not being submitted separately.