

JAMES J. HOLMBERG, III

IBLA 2001-235

Decided January 28, 2004

Appeal from a decision of the California State Office, Bureau of Land Management (BLM), declaring placer mining claims CAMC 277752 through CAMC 277757 forfeited by operation of law.

Reversed.

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

The requirement to perform assessment work on a mining claim begins with the assessment year commencing on the September 1 following the date of location of the claim. A claimant filing a maintenance fee waiver certification certifies compliance with the assessment work requirements for the assessment year ending on the September 1 that the maintenance fee is due. A decision forfeiting a mining claim for failure to record proof of labor by December 30 for the assessment year ending on the September 1 that the maintenance fee was due will be reversed when the claim was located during that assessment year and, hence, no proof of labor was required for that assessment year.

APPEARANCES: James J. Holmberg, III, Esq., San Diego, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

James J. Holmberg, III, has appealed from a March 12, 2001, decision of the California State Office, Bureau of Land Management (BLM), declaring the Arkiebar Mine 1-6 placer mining claims, CAMC 277752 through CAMC 277757, forfeited by

operation of law. The decision is two-fold, noting first that a maintenance fee payment for the 2001 assessment year was received on October 10, 2000, in an envelope postmarked October 5, 2000. Accordingly, the payment was found to be untimely. In addition, the decision held that, while a waiver certification was filed on August 31, 2000, a notice of intent or affidavit of labor was not received on or before December 30, 2000.^{1/} Finding that the waiver certification filed on August 31, 2000, was not accompanied by a \$5 service charge that was required if it was also to be processed as a notice of intent, BLM held the claims were forfeited by operation of law.

The record shows that the subject claims were all located on July 31, 2000, and copies of the location notices were filed with BLM on August 31, 2000. At the time the notices were filed, a payment of \$810 was tendered to cover the required location fee, the filing fee, and the maintenance fee for the 2000 assessment year (the year in which the claims were located) for each claim. See 43 CFR 3833.1-4(a) and (b), and 3833.1-5(a)(1). As noted, a waiver certification for the 2001 assessment year listing the subject claims was also filed with BLM on August 31, 2000, and a maintenance fee payment of \$600 for the 2001 assessment year was received by BLM on October 10, 2000.

In his statement of reasons, Holmberg reports that he was told by BLM, after filing his waiver certification, that he could not commence working on the claims. He asserts that “[a]fter conversation with a representative of BLM, [he] was directed to pay the maintenance fee of \$100.00 per mine rather than file an affidavit of assessment work.” (Statement of Reasons at 2.) Holmberg states that he “paid the maintenance fee as requested by BLM (emphasis added).” Id. He asserts that because BLM’s instructions came after September 1, he was denied the opportunity to tender the maintenance fees before that time.

Holmberg further contends that, pursuant to 43 CFR 3833.2-2(c), a notice of intent was not due until December 30, 2001. He argues that the regulation provides that a notice of intention to hold or evidence of assessment work is not required until the calendar year following the year of location and therefore the filing of a notice of intent is not untimely until after December 30, 2001.

^{1/} The BLM decision is unclear as to which assessment year required a filing of a proof of labor or notice of intention to hold by Dec. 30, 2000. The decision indicates in one sentence that in order to qualify for a waiver for the 2001 assessment year (which began Sept. 1, 2000), proof of labor or notice of intention to hold for the 2001 assessment year must be filed by Dec. 30, 2000. Later, the decision recites that no notice of intention to hold or proof of labor for the 2000 assessment year (which commenced Sept. 1, 1999) was filed by Dec. 30, 2000.

At issue here is whether Holmberg satisfied the requirements of 30 U.S.C. § 28f (2000), wherein Congress mandated that the holder of each unpatented mining claim, mill site, or tunnel site shall pay a claim maintenance fee of \$100 to the Secretary of the Interior on or before September 1 of each year for assessment years 1999 through 2001. Payment of this maintenance fee would be in lieu of the assessment work requirements of the Mining Law of 1872, 30 U.S.C. §§ 28-28e (2000), and the related filing requirements of section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (2000). 30 U.S.C. § 28f(a) (2000). However, failure to pay the fee “shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law.” 30 U.S.C. § 28i (2000).

[1] The Secretary has been accorded discretion to waive the fee for a small miner who holds not more than 10 mining claims, mill sites, or tunnel sites, or combination thereof, on public lands. 30 U.S.C. § 28f(d)(1) (2000). Congress, however, stipulated that those claimants who qualify for the small miner waiver and do not pay the fee must certify that they have performed the assessment work required to maintain the claim for the assessment year ending on the September 1 the annual payment is due. 30 U.S.C. § 28f(d)(1)(B) (2000); see 43 CFR 3833.1-7(d)(3); 3833.4(a)(1). Under the Mining Law, supra, and Departmental regulation 43 CFR 3851.1(b), a claimant must perform \$100 worth of labor annually on each claim located after 1872. This obligation, however, commences with the assessment year beginning on September 1 following the date of location of the claim. 30 U.S.C. § 28 (2000); 43 CFR 3851.1(b). In the circumstances of this case, in which the claims were located in July 2000, the assessment work obligation commenced with the assessment year beginning on September 1, 2000. Under the annual filing provisions of section 314 of FLPMA and Departmental regulation at 43 CFR 3833.2-2, the owner of an unpatented mining claim located on public land must file evidence of assessment work performed or a notice of intention to hold the claim with the proper BLM office prior to December 31 of each year “following the calendar year in which the * * * claim was located.” 43 U.S.C. § 1744(a) (2000); 43 CFR 3833.2-2(c). Failure to record with BLM creates a conclusive presumption of abandonment of the mining claim. 43 U.S.C. § 1744(c) (2000); 43 CFR 3833.4.

Reading these statutes and regulations together, it becomes apparent that no proof of labor or notice of intention to hold was required to be filed for these claims by December 30, 2000. Under the Mining Law and the implementing regulation, the obligation to perform assessment work begins with the assessment year commencing September 1 following the date of location of the claim (September 1, 2000, in this case). 30 U.S.C. § 28 (2000); 43 CFR 3851.1(b). Thus, no assessment work was required for the assessment year ending September 1, 2000. When filing a waiver certification, claimant certifies, among other things, that he has performed the

assessment work required under the Mining Law for the assessment year ending on September 1 of the year in which payment of the maintenance fee is due (September 1, 2000, in this case). 30 U.S.C. § 28f(d)(1)(B) (2000); 43 CFR 3833.1-7(d)(3). Claimant has complied with this requirement as no proof of labor was required for this assessment year. In cases where no labor is due for the assessment year ending on September 1 because the maintenance or rental fee for the claim was paid in advance for that assessment year, we have held it is error to hold a claim forfeited for failure to file a proof of labor by the following December 30 simply because a certification of qualification for waiver of maintenance fees for the next assessment year was filed by September 1. Patrick M. Layman (On Reconsideration), 144 IBLA 367, 368-69 (1998); Cheryl Jong, 142 IBLA 75, 76 (1997). The same analysis applies when no proof of labor or notice of intention to hold is required by December 30 because the claim was located during that calendar year. See Jackie and Richard Balch, 137 IBLA 72 (1996).^{2/} Accordingly, the BLM decision cannot be sustained.^{3/}

^{2/} The annual filing requirements of section 314 of FLPMA require filing a proof of labor or notice of intention to hold by Dec. 30 of each year following the calendar year in which the claim was located. 43 U.S.C. § 1744(a) (2000); 43 CFR 3833.2-2(c). In the Balch case the claims were located in Sept. 1993 during the 1994 assessment year. Accordingly, a filing under sec. 314 of FLPMA was required by Dec. 30, 1994 (the year following the calendar year of location). Even though no assessment work was due for the 1994 assessment year, appellants' claims were lost for failure to make an annual filing (notice of intention to hold) under sec. 314 of FLPMA during calendar year 1994. Those facts do not exist here where the claim was forfeited for failure to make an annual filing by Dec. 30 of the year in which the claim was located.

^{3/} In support of its conclusion, BLM cites the failure of claimant to make the filing required by the regulation at 43 CFR 3833.2-2. This regulation, however, requires claimants to file a notice of intention to hold or proof of labor by Dec. 30 of the calendar year following the calendar year in which the claim is located (Dec. 30, 2001, in this case). 43 CFR 3833.2-2(c).

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 reversed.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge