

CARL A. PARKER, SR.

IBLA 2003-252

Decided April 28, 2005

Appeal from a decision of the California State Office, Bureau of Land Management, declaring a mining claim forfeited and void by operation of law. CAMC 272311.

Affirmed.

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

Under 30 U.S.C. § 28f(a) (2000), as amended, the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee of \$100 per claim or site on or before September 1 of each year for years 2002 and 2003, and failure to pay the fee renders the claim forfeited and void by operation of law, under 30 U.S.C. § 28i (2000). Payment of the annual claim maintenance fee may be waived when a claimant certifies that, on the date payment of the maintenance fee was due, he held not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands and has performed the assessment work required by the Mining Law of 1872, for the assessment year ending at noon of September 1 of the calendar year payment was due. A claimant must file the waiver certification by September 1, at the beginning of the assessment year for which the waiver is sought.

2. Mining Claims: Assessment Work--Mining Claims: Rental or Claim Maintenance Fees: Generally

Under 43 CFR 3833.1-6(e) (2001), payment of mining claim maintenance fees may be deferred until the authorized officer has acted upon a petition for deferment

and, if the petition is granted, the fees may be deferred for the upcoming assessment year. A mining claimant who has not filed a petition for deferment of assessment work on or before September 1 for a given year does not qualify for a deferment of the maintenance fees.

APPEARANCES: Carl A. Parker, Sr., Hesperia, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

Carl A. Parker, Sr., has appealed from a May 6, 2003, decision of the California State Office, Bureau of Land Management (BLM), declaring the Parkers Drunkards Dream lode mining claim, CAMC 272311, forfeited and void by operation of law for failure to either pay a \$100 claim maintenance fee or file a waiver certification for the claim for the 2003 assessment year on or before September 1, 2002.

[1] Under the Maintenance Fee Act, as amended, Congress requires the holder of each unpatented mining claim, mill site, or tunnel site to “pay to the Secretary of the Interior, on or before September 1 of each year for years 2002 and 2003, a claim maintenance fee of \$100 per claim or site.” 30 U.S.C. § 28f(a) (2000), amended by Department of the Interior and Related Agencies Appropriations Act, 2002, Pub. L. No. 107-63, 115 Stat. 414, 418-19 (2001). Those miners who pay the maintenance fee are excused from performing the assessment work required under the Mining Law of 1872, 30 U.S.C. §§ 28-28e (2000), and meeting the related filing requirements of section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (2000). Congress mandates that failure to pay the claim maintenance fee “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).

Congress, however, provides that payment of the annual claim maintenance fee may be waived when a claimant certifies that, on the date payment of the maintenance fee is due, he holds “not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands” and has performed the assessment work required by the Mining Law of 1872, for the assessment year ending at noon of September 1 of the calendar year payment is due. 30 U.S.C. § 28f(d)(1) (2000) (the small miner waiver). In 2002, the Department implemented this statutory waiver provision with a regulation that requires the claimant to certify compliance with the conditions for waiver with the proper BLM office by September 1, at the beginning of the assessment year for which waiver is sought.

43 CFR 3833.1-7(d) (2001).^{1/} Compliance with the deadline was crucial because failure to file the waiver certification for “claimants who also fail to pay the maintenance fee * * * shall be deemed conclusively to constitute a forfeiture” of the claim.^{2/} 43 CFR 3833.4(a)(2) (2001).

The record indicates that Parker located the subject mining claim in 1997 and timely filed with BLM a copy of the notice of location, along with the appropriate maintenance fee. Thereafter, Parker timely filed the maintenance fee for this claim for the 1999 through 2002 assessment years. The last filing in the case file for this claim before BLM rendered its decision was the 2002 assessment year maintenance fee payment received by BLM on August 27, 2001.

Parker does not deny that he neither paid the claim maintenance fee nor filed a small miner waiver certification for the 2003 assessment year on or before September 1, 2002. Rather, he states:

The reason I haven't filed this yr., is that I made several efforts to get to this mine. There is a locked fence that I would have to go through and was refused permission to go through the gate. * * * I have contacted offices all the way up to the Bakersfield to no avail. I can't get in to see this mine, much less work it!

When I can get to this mine I will be glad to pay the \$100.00.

(Notice of Appeal, at ¶¶ 1, 2 (emphasis added).)

When Parker failed to pay the claim maintenance fee by September 1, 2002, the subject mining claim was forfeited by operation of law in the absence of a waiver of or exception to the payment requirement. Harlow Corp., 135 IBLA 382, 385 (1996), aff'd, Harlow Corp. v. Norton, No. 97-0320(RWR) (D.D.C. July 24, 2001), aff'd, 56 Fed. Appx. 513 (D.C. Cir.), cert. denied, ___ U.S. ___, 123 S. Ct. 2645 (2003); Joe Bob Hall, 135 IBLA 284, 286 (1996). As Parker did not timely seek the small miner waiver by filing the waiver certification on or before September 1, 2002, he cannot now qualify for that waiver.

^{1/} The regulations pertaining to maintenance fees and small miner waivers were amended in 2003 and are now found in 43 CFR Parts 3830, 3834, and 3835. See 68 FR 61046, 61073-77 (Oct. 24, 2003).

^{2/} Certification is essential to complying with the statutory requirement, and failure to make it cannot be cured. Julie Dimitrov, 164 IBLA 278, 285 (2005).

[2] However, there are some circumstances where a claimant may be excused or exempted from the requirement to pay a maintenance fee. See 43 CFR 3833.1-6 and 3833.1-7 (2001). In his letter of appeal, Parker asserts that he was prevented from accessing the subject claim, a circumstance which, in 2002, might have justified the deferment of assessment work and maintenance fees. See 30 U.S.C. § 28b (2000). The Department's regulation at 43 CFR 3852.1 (2001) provided as follows:

[D]eferment may be granted where any mining claim or group of claims in the United States is surrounded by lands over which a right-of-way for the performance of assessment work has been denied * * * or where other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof.

In order to obtain a deferment, "the claimant shall file with the proper BLM office a petition in duplicate requesting such a deferment." 43 CFR 3852.2 (2001). Under 43 CFR 3833.1-6(e) (2001), "[i]f a petition for a deferment of assessment work, as required by § 3852.2 of this title, is filed with the proper BLM office on or before September 1 for a given year, the maintenance fee need not be paid on the claims listed in the petition for deferment until the authorized officer has acted upon the petition." Thereafter, "[i]f the petition is granted, maintenance fees for the claims are deferred for the upcoming assessment year." 43 CFR 3833.1-6(e)(1) (2001).

The deferment is conditioned upon the filing of a petition in accordance with 43 CFR 3852.2. A mining claimant who has not filed a petition for deferment of assessment work does not qualify for a deferment of the maintenance fees. Cheryl Jong, 154 IBLA 71, 78-79 (2000); Stephen Dwyer, 151 IBLA 92, 95 (1999). Although Parker alleges lack of access to his claim, there is no indication in the record that he filed a petition for deferment of assessment work for the 2003 assessment year on or before September 1, 2002. Therefore, Parker has failed to satisfy this prerequisite and is not entitled to a deferment of payment of the maintenance fee for the assessment year starting September 1, 2002.

When, as in this case, a claimant fails to file a waiver timely and no payment has been made, forfeiture results from the statutory requirement to pay by a date certain. Howard J. Hunt, 147 IBLA 381, 384 (1999). It is indeed unfortunate if, as Parker claims, he was prevented from accessing his claim due to no fault of his own. However, the provisions of the statute are self-executing and, even where extenuating circumstances are asserted but a petition for deferment has not been filed and a deferment has not been granted, this Board is without authority to excuse lack of compliance with the maintenance fee requirement, to extend the time for compliance, or to afford any relief from the statutory consequences. Richard W.

Cahoon Family Limited Partnership, 139 IBLA 323, 326 (1997); Paul W. Tobeler, 131 IBLA 245, 249 (1994). Thus, in the absence of evidence that the maintenance fee requirement was satisfied, we must find that BLM properly declared the mining claim forfeited and void.

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.

Christina S. Kalavritinos
Administrative Judge

I concur:

H. Barry Holt
Chief Administrative Judge