



ESTES R. BAZOR

177 IBLA 39

Decided March 30, 2009



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

ESTES R. BAZOR

IBLA 2009-78

Decided March 30, 2009

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring the Lucky Day unpatented mining claim (ORMC 4125) forfeited by operation of law for failure to pay a \$125 per claim maintenance fee or to file a maintenance fee payment waiver certification on or before September 1, 2008, for the 2009 assessment year.

Set aside and remanded; stay denied as moot.

1. Mining Claims: Rental or Claim Maintenance Fees:
Generally--Filing Requirements: Soldiers' and Sailors' Civil Relief Act

A mining claimant who is on active military duty is relieved, pursuant to the Servicemembers' Civil Relief Act, of performing annual assessment work or paying claim maintenance fees, and is protected from forfeiture of interest in a claim, while on active duty and for a period of 180 days thereafter, or during any period of hospitalization or rehabilitation due to injuries or disabilities incurred in the line of duty, by filing a notice with BLM during the assessment year in which the claimant enters military service or within 60 days after the end of such assessment year.

2. Mining Claims: Rental or Claim Maintenance Fees:
Generally--Filing Requirements: Soldiers' and Sailors' Civil Relief Act

A claimant's notice to BLM of recent active military duty is sufficient to require BLM to evaluate application of the Servicemembers' Civil Relief Act to determine if the claimant qualifies for relief and the claim should be reinstated. When a claimant provides such notice after BLM has invalidated a mining claim for failure to timely

pay the annual maintenance fee, BLM's decision will be set aside and the matter remanded for BLM to adjudicate the claimant's eligibility for relief under the Act.

APPEARANCES: Estes R. Bazor, *pro se*, Wheatland, California.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

Estes R. Bazor has appealed from and requested a stay of a December 3, 2008, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring the Lucky Day (ORMC 4125) mining claim forfeited for failure to pay the \$125 per claim maintenance fee or to file a Maintenance Fee Payment Waiver Certification on or before September 1, 2008, for the 2009 assessment year. For reasons set forth below, we set aside and remand BLM's decision.

Under 30 U.S.C. § 28f(a) (2006), the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a maintenance fee for each claim or site on or before September 1 of each year.¹ See 43 C.F.R. § 3834.11(a)(2). Payment of the claim maintenance fee is in lieu of the assessment work requirements of the Mining Law of 1872, 30 U.S.C. §§ 28-28e (2006), and the related filing requirements of section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (2000), for the upcoming assessment year that begins at noon on September 1 of the year payment is due. See 30 U.S.C. § 28f(a) and (b) (2006); 43 C.F.R. § 3834.11(a).

The failure to pay the claim maintenance 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 (2006); see 43 C.F.R. §§ 3830.91(a), 3835.92(a). Congress, however, provided the Secretary with discretion to waive the fee for a claimant who certified in writing 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 had performed assessment work required under the Mining Law of 1872, for the preceding assessment year ending at noon on September 1 of the calendar year in which payment of the claim maintenance fee is due. 30 U.S.C. § 28f(d)(1) (2006); see *Audrey Bradbury*, 160 IBLA 269, 273-74 (2003). BLM implemented this statute with a regulation that requires a claimant to file "BLM's waiver certification

¹ The Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844, 2101 (2007), has made the Sept. 1 maintenance fee requirement permanent by removing the date range previously imposed by Pub. L. No. 108-108, 117 Stat. 1241, 1245 (2003) (years 2004 through 2008).

form on or before September 1 of each assessment year for which you are seeking a waiver.” 43 C.F.R. § 3835.10(a).

In this case, Bazor submitted his annual maintenance fee late, on September 12, 2008, in an envelope postmarked September 10, 2008. However, the letter accompanying the payment stated “I have been deployed to the Middle East with the Air Force for almost 5 months of this year so I am not sure when it is due.” His notice of appeal also stated “I have spent a good deal of this year on USAF Orders in the Middle East and have been ill since receiving the notice from the BLM.” These statements raise the possibility that Bazor² may qualify for relief under the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. § 564 (2000 & Supp. V 2006).³

[1] The SCRA was passed:

- (1) to provide for, strengthen, and expedite the national defense through protection extended by this Act to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and
- (2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.

50 U.S.C. App. § 502 (2000 & Supp. V 2006). Specifically, it provides that:

(a) Requirements Suspended. – The provisions of [] (30 U.S.C. 28) . . . shall not apply to a servicemember’s claims or interests in claims, regularly located and recorded, during a period of military service and 180 days thereafter, or during any period of hospitalization or rehabilitation due to injuries or disabilities incurred in the line of duty.

. . .

(c) Period of Protection From Forfeiture. – A mining claim or an interest in a claim owned by a servicemember that has been regularly located and recorded shall not be subject to forfeiture for nonperformance of annual assessments during the period of military

² 43 C.F.R. § 3835.1(b); *Eric Lundquest*, 166 IBLA 1, 3 n.4 (2005).

³ This act in 2003 slightly amended the Soldiers’ and Sailors’ Civil Relief Act of 1940 (SSCRA), 54 Stat. 1178. See *Eric Lundquest*, 166 IBLA at 2-3. To the extent there may be co-claimants, all co-claimants must be military personnel on active duty status to qualify for relief.

service and for 180 days thereafter, or for any period of hospitalization or rehabilitation described in subsection (a).

50 U.S.C. App. § 564 (2000 & Supp. V 2006).

To qualify for this relief, a claimant must file notice with BLM before the end of the assessment year during which military service begins or within 60 days after the end of the assessment year. 50 U.S.C. App. § 564(d) (2000 & Supp. V 2006). BLM's regulations provide specific instructions for how to file an application for waiver, which extends to payment of the claim maintenance fee, and the claimant must notify BLM when leaving active duty status. 43 C.F.R. § 3835.11(b). A waiver is automatically renewed so long as the claimant continues to meet the qualifications. 43 C.F.R. § 3835.13(b).

[2] In *Eric Lundquest*, an earlier Board decision addressing similar issues, appellants specifically invoked the protections of the SSCRA in their notice of appeal. See 166 IBLA at 2-3. In the instant case, no such specific invocation has been forthcoming. However, Bazor's letter accompanying his maintenance fee payment and his later notice of appeal mentioned his recent active military service, providing BLM with notice and "reason to suspect" that Bazor might be entitled to relief under the SCRA. See, e.g., *Merrill v. Beard*, 2007 WL 461469, *3 (N.D. Ohio 2007).⁴ Such notice is sufficient to require BLM to evaluate application of the SCRA.⁵

BLM is obligated to adjudicate Bazor's qualification for relief under the SCRA and determine whether the Lucky Day mining claim should be reinstated. *Lundquest*, 166 IBLA at 4. Accordingly, BLM's decision will be set aside and the matter remanded for such an adjudication.

⁴ In that case, the District Court voided a default judgment against the defendant because the plaintiff failed to follow the procedures of sec. 201(b)(1) of the SCRA, 50 U.S.C. App. § 521(b)(1) (2000 & Supp. V 2006), when plaintiff had "reason to suspect Defendant was in the military at the time they sought default judgment."

⁵ We note that the Supreme Court in construing the SSCRA stated that it should be read "with an eye friendly to those who dropped their affairs to answer their country's call." *Le Maistre v. Leffers*, 333 U.S. 1, 6 (1948). The same should hold true for the SCRA.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the requested stay is denied as moot, and the decision appealed from is set aside and remanded for action consistent with this decision.

_____/s/_____
H. Barry Holt
Chief Administrative Judge

I concur:

_____/s/_____
Bruce R. Harris
Deputy Chief Administrative Judge