

NOTE: This disposition is nonprecedential.



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
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September 13, 2016

IBLA 2016-138)	CAMC 21336
)	
KENNETH M. TWAIN)	Mining Maintenance Fees
)	
)	Affirmed; Petition for Stay
)	Denied as Moot

ORDER

On October 6, 2015, appellant filed with the Bureau of Land Management (BLM) a Small Miner Waiver Certification so the bureau could exempt his unpatented mining claim (CAMC 21336) from the annual maintenance fee requirement for the 2016 assessment year. By decision dated March 4, 2016, BLM informed appellant that he did not timely file his Waiver Certification, which resulted in the automatic forfeiture of his unpatented mining claim. This appeal followed, along with a request to stay BLM's decision.

Because the law grants BLM no discretion to save a mining claim when the claimant does not meet statutory deadlines, the question on appeal is whether the claimant in fact met those deadlines. Neither the record nor appellant's arguments demonstrate that he filed his Waiver Certification on time, so we affirm BLM's decision.

We Uphold BLM's Decision Because Appellant Did Not Show that He Timely Filed a Waiver Certification or Paid the Annual Maintenance Fee

If a claimant does not file a Waiver Certification or pay the required maintenance fee by the annual deadline, then the law provides that the claimant has conclusively forfeited the claim by operation of law.¹ Neither BLM nor this Board can afford a claimant any relief from the automatic statutory forfeiture provision.² Thus,

¹ 30 U.S.C. §§ 28f, 28i (2012); see 43 C.F.R. §§ 3830.91(a)(4), 3835.1, 3835.10(a), 3835.92(a).

² See *Kenneth Pedersen*, 187 IBLA 130, 133 (2016), and cases cited.

the Board must uphold a BLM decision declaring a mining claim forfeited when the record shows that the claimant did not timely file either the Waiver Certification or the annual maintenance fee.³

To prevail on appeal, appellant would need to show that he met the statutory deadline for filing a Waiver Certification or paying the annual maintenance fee.⁴ Appellant has not made such a showing. It is undisputed that appellant did not timely file a Waiver Certification for the 2016 assessment year. The record shows that appellant mailed to BLM the Waiver Certification on October 6, 2015, and BLM received the filing on October 9, 2015 -- 38 days after the deadline passed. Nor does the record show that appellant paid the annual maintenance fee on or before September 1, 2015.

Appellant's primary argument is that he, along with the other four co-claimants, correctly filed the Waiver Certification for the past 18 years, and forfeiture of the claim after so many years of adhering to the filing requirements would cause each claimant financial and personal hardship. The fact that appellant correctly filed Waiver Certifications in the past, however, does not establish that he in fact timely filed the document by September 1, 2015, for the 2016 assessment year.⁶

Appellant also argues that he filed the Waiver Certification based on information contained on BLM's website about the December 30 deadline for affidavits of assessment work and information from BLM staff indicating that he should file his Waiver Certification and affidavit at the same time.

As the Board has explained before, the fact that the Waiver Certification must be filed *before* an assessment year, any required assessment work must be performed *during* that assessment year, and the assessment work must be documented by December 30 *after* that assessment year might make the process somewhat complex, but it does not alter the rule.⁷ Indeed, the BLM webpage appellant attached to his statement of reasons correctly states that the "2016 Maintenance Fee Waiver Certification" must be filed "on or before September 1, 2015." We further note that even if BLM provided conflicting or confusing information to appellant about the

³ See *Kenneth Pedersen*, 187 IBLA at 134.

⁴ See 43 C.F.R. § 3830.91(a)(4).

⁶ See *Robert L. Race*, 63 IBLA 1, 3 (1982).

⁷ *Audrey Bradbury*, 160 IBLA 269, 274 (2003); see also *Dorothy Spangler*, 188 IBLA 89, 91 (2016).

filing deadlines, BLM cannot be bound by that information because it is contrary to the law.⁷

The fact remains that the applicable laws require claimants to file a Waiver Certification or to pay the maintenance fee by September 1 before the assessment year. Because appellant did not timely file a Waiver Certification or pay the maintenance fee for his mining claim for the 2016 assessment year, appellant forfeited the mining claim.⁸

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,⁹ we affirm BLM's decision and deny appellant's stay petition as moot.

_____/s/
Eileen G. Jones
Chief Administrative Judge

I concur:

_____/s/
Silvia M. Riechel
Administrative Judge

⁷ 43 C.F.R. § 1810.3; see *Carl Holzer*, 185 IBLA 324, 327 (2015); *Salmon Creek Association*, 151 IBLA 369, 372 (2000).

⁸ See 43 C.F.R. §§ 3830.91(a)(4), 3835.92(a).

⁹ 43 C.F.R. § 4.1.