

UNITED STATES v. WILLIE WALKER

IBLA 70-50      Decided September 24, 1970

Mining Claims: Contests -- Rules of Practice: Government Contests

A mining claim is properly declared null and void when the contestee responds to a Government complaint charging a lack of discovery and nonmineral character of the land within the time required for filing an answer but the response fails to deny the allegations of the complaint and, therefore, the allegations of the complaint are taken as admitted.

IBLA 70-50: Oregon Contest No. 3508

UNITED STATES :	Mining claim declared
v.	: null and void
WILLIE WALKER	: Affirmed

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

Mrs. Willie Walker has appealed to the Secretary of the Interior from a decision by the Chief, Branch of Mineral Appeals, Office of Appeals and Hearings, BLM, dated March 18, 1969, purporting to dismiss her appeal to that office <sup>1/</sup> and also affirming an Oregon land office decision on August 27, 1968, declaring her Big Spring No. 2 placer mining claim to be null and void for the reason that her response to the Government's contest complaint against the claim did not deny the allegations of the complaint and therefore they are taken as being admitted by the contestee.

The Government's contest complaint was served upon Mrs. Walker on July 22, 1968, charging that the land embraced within the mining claim is nonmineral in character and that minerals have not been found within the limits of the claim in sufficient quantities to constitute a valid discovery. The complaint requested that the claim be declared null and void. It also stated that unless the contestee filed an answer to the complaint in the land office within 30 days after service of the complaint the allegations of the complaint will be taken as admitted and the case decided without a hearing. To the same effect are the rules of practice of this Department, 43 CFR 1852.1-6, 1852.1-7(a) and 1852.2-2.

A thorough review of the record reveals that appellant failed to file an answer as required by 43 CFR 1852.1-7(a). Appellant sent a letter within the time required for filing an answer but the land office properly informed her that it was inadequate to constitute an answer and advised her as to what was necessary. Her response was to return the contest complaint with her written statement thereon that she was

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<sup>1/</sup> Because the Bureau also affirmed the land office decision the procedural ground of dismissal will not be discussed except to note that we think it was not warranted.

"contesting this letter" as she had not had the claim one year yet. This statement did not deny the allegations of the complaint, nor did her further statement as to doing assessment work. Her other statements that "I've spent so much money having it backhoed out to get down to where I can look," and "I have not been given a chance to go to bed rock and I do believe I can find something there", imply that valuable minerals had not been discovered at the time the complaint was filed. Where statements filed within the time for an answer do not constitute a denial of the complaint allegations the time within which to file a proper answer is not waived nor suspended. United States v. Gifford Allen, et al., A-28718 (July 26, 1962).

Although appellant in her appeal to the Bureau and in her present appeal attempts to deny the allegations of the complaint and allege facts to show discovery, these statements have been made after the time expired for the filing of an answer. This Department has ruled that its regulations cannot be waived to accept an answer filed after a land office decision was rendered declaring the claim to be null and void. United States v. Harold H. Hunter, A-30872 (February 21, 1968). Therefore, appellant's statements on appeal cannot serve as an answer to the complaint or to make up the deficiency in her initial responses to the complaint. If the land has not been withdrawn and is still open to mineral location, this decision will not preclude the appellant from relocating her mining claim, if she desires.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision is affirmed on the ground above-indicated.

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Francis Mayhue, Member

I concur:

I concur:

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Edward W. Stuebing, Member

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Martin Ritvo, Member

