

Editor's note: Appealed – remanded, Civ.No. 1-70-125 (D. Idaho Dec. 6, 1971)

UNITED STATES

v.

ELSIE CODY

IBLA 70-23 Decided November 13, 1970

Administrative Procedure Act: Hearing Examiners – Rules of
Practice: Hearings

A hearing officer is not disqualified nor will his findings be set aside in a mining contest upon a charge of bias in the absence of a substantial showing of bias.

Mining Claims: Determination of Validity

The Department of the Interior has been granted plenary power in the administration of the public lands, and it has authority, after proper notice and upon adequate hearing, to determine the validity of an unpatented mining claim.

Mining Claims: Determination of Validity

In order to demonstrate the validity of a mining claim it must be shown as a present fact that the claim is valuable for mining purposes.

Mining Claims: Discovery: Generally

To demonstrate a valid discovery upon a mining claim it must be shown that minerals have been found within the limits of the claim in such quantity and of such quality as to warrant a man of ordinary prudence in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. Evidence which shows only the existence of low values in gold which would not equal the cost of recovery cannot be coupled with hope or belief that minerals of greater value exist within the claim or with speculation that future demand will make valuable that which cannot be economically mined today as a substitute for the finding of minerals of present economic worth.

IBLA 70-23 : Idaho Contest No. 175

UNITED STATES : Placer mining claim
v. : declared invalid
ELSIE CODY : Affirmed

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

Elsie Cody has appealed to the Secretary of the Interior from a decision dated December 18, 1968, whereby the Office of Appeals and Hearings, Bureau of Land Management, affirmed the decision of a hearing examiner declaring the Golden Point No. 2 placer mining claim in sec. 7, T. 5 N., R. 5 E., Boise Mer., Boise National Forest, Idaho, to be invalid.

The record shows that appellant's husband, M. A. Cody, acquired the Golden Point No. 2 mining claim by purchase on May 20, 1953, and appellant succeeded to the interest of her husband in the claim upon his death on September 30, 1953. The claim is alleged to be valuable for gold.

On October 12, 1966, upon the recommendation of the Forest Service, United States Department of Agriculture, a contest complaint was filed in the Idaho land office which alleged:

1. The land included within the boundaries of the claim is not mineral in character.
2. No discovery of a valuable mineral subject to location has been demonstrated within the limits of the claim.
3. The claim is not being held in good faith for bona fide mining purposes.

A hearing was held on those charges at Boise, Idaho, in July 1967 at which appellant appeared, represented by counsel.

From the evidence developed at the hearing, the hearing examiner determined that the claim was invalid for lack of discovery of a valuable mineral deposit. The examiner found that the tangible evidence of mineralization on the claim showed only negligible values. The opinion of claimant that sufficient mineralization existed on the claim warranting expenditure of time and money to develop the claim and the opinion of her expert witness that the claim was worth holding, the examiner found, were based upon hope and belief not sustained by the evidence and not acceptable as the equivalent of a discovery.

The evidence presented by expert witnesses for contestant tended to show that the cost of extracting the gold present on the claim would substantially exceed the value of the minerals present. The evidence presented by the expert for appellant was based primarily upon assumptions and suppositions. Therefore, the basis for his opinions was not founded upon recognized tests and standards and the hearing examiner properly accorded little weight to his testimony.

In appealing to the Secretary from the decision of the Office of Appeals and Hearings sustaining the hearing examiner appellant contends that:

- (1) The hearing examiner, as well as the Chief, Branch of Mineral Appeals, who signed the decision below, are directly responsible to the Department of the Interior and are therefore incapable of rendering an impartial decision; and
- (2) The decisions of the hearing examiner and of the Office of Appeals and Hearings are contrary to the law and the evidence in that:
 - (a) The contestant failed to establish a prima facie case;
 - (b) The decisions relied on profitability of the mining operation as the criterion for determining validity;

- (c) The decisions relied upon the theory that a valid discovery must occur at the time of the hearing;
- (d) The evidence established a valid discovery under both the prudent man and profitability tests; and
- (e) The evidence established that the lands embraced in the contested claim are mineral in character.

In alleging bias on the part of the hearing examiner and the Bureau official who signed the decision of December 18, 1968, appellant is, in reality, challenging the authority of this Department to determine the validity of an unpatented mining claim in an administrative proceeding. The authority of this Department to make such a determination after proper notice and upon adequate hearing is well established. See Cameron v. United States, 252 U.S. 450 (1920); Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963); Davis v. Nelson, 329 F. 2d 840 (9th Cir. 1964); United States v. Ford M. Converse, 72 I.D. 141 (1965); aff'd in Converse v. Udall, 399 F. 2d 616 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969). Moreover, the law requires a substantial showing of bias to disqualify a hearing officer or to justify a ruling that a hearing was unfair. Converse v. Udall, supra. Appellant's desperate attempt to have the proceedings in this case nullified on grounds that responsible departmental officials were biased is not supported by a scintilla of factual or legal evidence. Appellant contends that the hearing examiner and Office of Appeals ignored the law and evidence in reaching their decisions. The record clearly reveals that the recognized standards of discovery were followed. Mere evidence of mineralization that might warrant further exploration or engender hope of future profit does not demonstrate a discovery. For cases involving the applicable standards see United States v. Coleman, 390 U.S. 599 (1968); Converse v. Udall, supra; United States v. Henault Mining Company, 73 I.D. 184 (1966), aff'd in Henault Mining Company v. Tysk, 419 F. 2d 766 (9th Cir. 1969), cert. denied, 398 U.S. 950 (1970); United States v. Harold Dale, A-30465 (January 20, 1966); Marvel Mining Company v. Sinclair Oil and Gas Company et al., 75 I.D. 407 (1968); United States v. Warren E. Wurts and James E. Harmon, 76 I.D. 6 (1969). In light of the foregoing cases we conclude from the

record that the contestant did make a prima facie showing of lack of discovery and appellant's evidence, even if standing alone and unchallenged, would not be sufficient to demonstrate a discovery. It was, therefore, wholly inadequate to rebut the contestant's prima facie case. In view of this conclusion, it is unnecessary to determine whether or not the first and third allegations of the complaint were sustained. The claim was properly declared to be invalid for lack of discovery alone.

Therefore, 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 appealed from is affirmed.

Francis Mayhue, Member

I concur:

I concur:

Edward W. Stuebing, Member

Martin Ritvo, Member

