

UNITED STATES
v.
LEWIS MAUS AND FRANK G. MORRISON

IBLA 72-217

Decided June 14, 1972

Appeal from a hearing examiner decision declaring a mining claim null and void for lack of discovery.

Dismissed.

Mining Claims: Determination of Validity

Where a hearing examiner has declared a mining claim to be null and void for lack of discovery, and the mining claimant makes no attempt to show error in that particular finding, the hearing examiner's decision will not be disturbed.

Rules of Practice: Appeals: Statement of Reasons

A statement of reasons which does not point out the grounds upon which the decision appealed from is in error will be treated in the same manner as an appeal in which no statement of reasons is filed and the appeal will be dismissed.

APPEARANCES: Frank G. Morrison

OPINION BY MR. FRISHBERG

Pursuant to a complaint alleging lack of discovery by the Forest Service, a contest, Idaho 3335, was initiated against the Maus-Morrison mining claim. A hearing was duly conducted on August 17, 1971. Both the government and the contestee appeared by counsel. Based upon the evidence adduced, the hearing examiner held the mining claim void for lack of discovery. The appeal from that decision was taken in person by Mr. Morrison. He asserted as follows:

1. We were not in possession of sufficient and adequate information relative to this type of government takeover.
2. Our legal counsel was likewise unfamiliar with this type of proceedings.

3. We believe that our constitutional rights have been violated.

The rules of practice concerning appeals procedures, 43 CFR 4.400, *et seq.*, require an appellant to state his reasons and to present argument in support of his appeal. The appellants' statement does not point out wherein it is believed there was error in the decision below or in what manner the locators' constitutional rights were violated. The statement contains no specification of error. It is essentially nothing more than a statement that the parties were unprepared to demonstrate a discovery within the limits of their claim and a request for a further opportunity to do so.

The statement does not meet the requirements of the rules of practice in that it does not point out the grounds upon which the decision appealed from is in error. A mere statement that there has been error or that constitutional rights have been violated does not meet the requirement to show affirmatively in what respect the decision appealed from is in error. An appellant may not shift to the Department the burden of determining whether an error has been committed. When such an attempt is made the appeal will be treated in the same manner as an appeal in which no statement of reasons was filed within the time permitted, and the appeal will be dismissed. United States v. Heyser, 75 I.D. 14 (1968); Duncan Miller, 65 I.D. 290 (1958); United States v. Cascade Calcium Products, Inc., A-31187 (November 4, 1969); Maria Fischer, A-30314 (June 7, 1965).

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 appeal is dismissed.

Newton Frishberg, Chairman

We concur:

Edward W. Stuebing, Member

Joseph W. Goss, Member

