

JAMES R. ECK

IBLA 71-84

Decided June 29, 1972

Appeal from decision (C 11519) of Colorado land office, Bureau of Land Management, denying petition for temporary deferment of annual assessment work.

Affirmed.

Contests and Protests: Generally -- Mining Claims: Assessment Work

The pendency of a contest charging that certain mining claims are null and void for lack of discovery and other grounds is not a sufficient basis, under 30 U.S.C. § 28b (1970), to grant a deferment of annual assessment work.

APPEARANCES: James R. Eck, pro se.

OPINION BY MR. FISHMAN

James R. Eck has appealed from a decision of the land office, Denver, Colorado, of the Bureau of Land Management, dated September 23, 1970, denying his petition for temporary deferment of annual assessment work on 63 mining claims.

The petition, filed under 30 U.S.C. § 28b (1970), and the regulations thereunder, 43 CFR Subpart 3852 (1970 and 1972), showed that the Bureau had initiated a contest against 22 1/ of the 63 claims, for all of which the appellant sought deferment of assessment work.

The appellant stated that due "to this contest I am unable to justify additional expenditures at this time. I do not feel that

1/ These claims were declared null and void by decision of a hearing examiner, dated September 2, 1971. That decision became final because no appeal was filed therefrom. In the circumstances, the appeal is moot as to the 22 claims which are no longer in esse.

I should be expected to continue the assessment work until this contest is settled. * * *" This may be a reasonable business judgment, but it does not comport with the law.

As the land office properly held, the law and regulations authorize the granting of a petition for deferment of annual assessment work only where certain factors exist "which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof." 30 U.S.C. § 28b (1970). The appellant has not shown that his right to enter upon the claims has been obstructed.

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 of the land office is affirmed.

Frederick Fishman, Member

I concur:

Douglas E. Henriques, Member

I concur in the result:

Joan B. Thompson, Member

