

RONALD E. HURST

IBLA 71-267

Decided October 3, 1972

Appeal from a decision (Anchorage 061501) of the Alaska state office, Bureau of Land Management, rejecting homestead final proof and canceling the homestead claim.

Affirmed.

Alaska: Homesteads--Homesteads (Ordinary): Cultivation--Homesteads: (Ordinary) Final Proof

A homestead final proof submitted at the end of the fifth entry year must be rejected and the entry canceled where it shows on its face that the entryman has not cultivated in any of the entry years.

Alaska: Homesteads--Homesteads (Ordinary): Cultivation

A request for reduction of the homestead cultivation requirements is properly denied where the record shows that the entryman has failed to cultivate any of the cultivable land within the entry.

APPEARANCES: Ronald E. Hurst, pro se.

OPINION BY MR. GOSS

Ronald E. Hurst has appealed to the Secretary of the Interior from a decision of the Alaska state office of the Bureau of Land Management, dated April 2, 1971, which refused a reduction in the cultivation requirements for his homestead entry, rejected his final proof and canceled the homestead claim.

The record shows that appellant filed a notice of location of his homestead claim with the Anchorage land office July 7, 1964. He was informed that in order to acquire title to the lands claimed he must fulfill all the homestead requirements as to residence and cultivation prior to the expiration of the entry on July 6, 1969, in accordance with the provisions of the homestead laws, now 43 U.S.C. §§ 270, 161 et seq. (1970). In his final proof submitted June 12, 1969, appellant admitted that from 1964-1969 he had not

cultivated any of his entry, and requested a reduction of cultivation requirements. He stated that:

The land at Saltery Cove is impractical for cultivation * * *. The land's most profitable use is grazing. On Kodiak Island elsewhere there is no agricultural use of the land other than grazing.

The appellant admits that he failed to cultivate his homestead. However, he asserts that his homestead final proof should not be rejected because his was not the usual homestead operation in that "We were trying to obtain land on our leases (grazing) so we would have security for our improvements. This 160 acre homestead deal was what the BLM agreed to in order to obtain deeded land in this area."

The homestead law requires that an entryman cultivate not less than 1/16 of his entry beginning with the second year of the entry and not less than 1/8 beginning with the third year, and each year thereafter until final proof. 43 U.S.C. § 164 (1970).

With regard to appellant's request for reduction of the cultivation requirements, the state office properly found appellant ineligible for such relief, stating:

No reduction in the cultivation requirements of the law is justified until the entryman has cultivated all cultivable land in his entry. Andy A. Lee, A-27685 (December 3, 1958). Both the entryman's final proof testimony and the approved field report show approximately 10 acres of land within the boundaries [of the entry] which could be cultivated.

Appellant's admitted purpose for filing the homestead application was to secure the existing improvements on his grazing lease, rather than agricultural development. In view of the circumstances, appellant has shown no basis on which his request for reduction of cultivation requirements could be considered. The state office application of the requirements for reduction under 43 CFR 2511.4-3(b) is correct. Further amplification is unnecessary.

Where the homestead entryman's final proof shows on its face that he has failed to cultivate his entry in any year of his entry, the final proof must be rejected and the entry canceled. Pekka Merikallio, A-30892 (March 15, 1968); Gary L. Owen, A-30768 (June 20, 1967). The state office properly rejected appellant's final proof on this basis.

As to appellant's statements with regard to the earthquake of March 27, 1964, the earthquake occurred substantially prior to the

filing of appellant's notice of location and the consequences thereof, though most severe, are not relevant to this case.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed and the entry is canceled.

Joseph W. Goss, Member

We concur:

Newton Frishberg, Chairman

Martin Ritvo, Member

