

TIBOR W. FEJER  
and  
ROBERT B. McCLURKIN

IBLA 73-39

Decided June 15, 1973

Appeal from decision (ES 9667) of Eastern States Office, Bureau of Land Management, rejecting application for cash payment in satisfaction of a soldier's additional homestead right.

Affirmed.

Administrative Procedure: Burden of Proof

An applicant asserting a claim to receive the benefits of an Act of Congress has the burden of presenting sufficient evidence of his entitlement to such benefits.

Scrip: Validity--Soldiers' Additional Homesteads: Generally

An application for cash payment under a soldier's additional homestead right is properly rejected where the applicant fails to establish that the soldier and the homestead entryman, upon whose military service and entry the claim is based, were the same person.

APPEARANCES: Tibor W. Fejer and Robert B. McClurkin, pro se.

OPINION BY MR. FISHMAN

Tibor W. Fejer and Robert B. McClurkin have appealed from a decision of the Eastern States Office, Bureau of Land Management, dated June 9, 1972, rejecting their application for cash payment in satisfaction of a soldier's additional homestead right.

Appellants base their claim on an alleged soldier's additional homestead right to 80 acres of one Jephtha Martin. 43 U.S.C. §§ 274, 278 (1970). Appellants' asserted right, which is held by assignment, was recorded in accordance with the Act of August 5, 1955, 69 Stat. 534, 43 U.S.C. § 274 (1970) note, and their application was filed

pursuant to the Act of August 31, 1964, 78 Stat. 751, 43 U.S.C. § 274 (1970) note.

Appellants' application for cash payment was rejected by the Bureau on the basis that appellants failed to establish that the soldier, upon whose service their claim is predicated, was the same person who made the homestead entry and that the asserted soldier's additional homestead right is invalid. We reach the same conclusion.

An applicant asserting a claim to receive the benefits of an Act of Congress has the burden of establishing his entitlement to such benefits. Van Ragsdale, A-21175 (July 13, 1938), IGD 61; see Mrs. J. W. Moore, 8 IBLA 261 (1972). To establish a right to a cash payment under the Act of August 31, 1964, for a soldier's additional homestead right, it must be shown that an eligible discharged soldier who served in the Civil War made an entry of less than 160 acres under the homestead laws. George Rodda, Jr., 7 IBLA 79 (1972).

The record shows that in 1871 one Jephtha Martin made an application at the Land Office in Little Rock, Arkansas, for a homestead entry (No. 4970) of 80 acres described as the E 1/2 NE 1/4, sec. 26, T. 20 N., R. 1 W. The entry was cancelled on July 14, 1879, for abandonment.

There were apparently at least two soldiers who served in the Civil War named Jephtha Martin. Appellants' right is based upon the military service of a Jephtha Martin who, according to the Adjutant General's Office of the State of Missouri, was mustered into service on May 14, 1862, at Ironton, Missouri, as a private in Company "M", Third Regiment Cavalry, Missouri State Militia Volunteers. This Jephtha Martin was mustered out of the service and honorably discharged at Macon, Missouri, on May 9, 1865. The other Jephtha Martin served as a private in Company "K", 81st Regiment, Illinois Infantry, from August 12, 1862, to August 12, 1865, as shown by a report from the former War Department. Attempts have been made in the past to obtain the benefits of the soldier's additional homestead right of Jephtha Martin. Some claims were asserted on the basis that the soldier from Illinois was the entryman; others were asserted on the basis that the soldier from Missouri was the entryman. All such claims were denied.

Appellants have attempted to establish that the Jephtha Martin who served in the Missouri State Militia Volunteers was in fact the homestead entryman under application No. 4970. Appellants have suggested several theories to establish the requisite identity but

have not substantiated their theories with sufficient evidence. For example, one of appellants' theories is that the Jephtha Martin who filed the homestead application never used a middle initial or name, and that the only other person claimed to be the entryman under homestead entry No. 4970 is the soldier Jephtha Martin who served in the Illinois Infantry. Appellants argue that this soldier from Illinois was always referred to as Jephtha M. Martin or Jephtha Monteville Martin and have submitted copies of various documents from the National Archives to support their position.

The appellants' theory and the supporting documentation are unconvincing. The documentation generally relates to a pension claim made by the widow of the Jephtha Martin who served in the Illinois Infantry. In some of the places where the name Jephtha M. Martin occurs, the middle initial appears to have been inserted after the name Jephtha Martin was written. In any event, a signature tracing from the records of the former War Department indicates that the soldier from Illinois signed his name as Jephtha Martin with no middle name or initial.

Even if we were to assume that appellants' theory reflected the true facts and that the soldier from Illinois bore the name Jephtha M. or Jephtha Monteville Martin, appellants' theory suffers an additional infirmity: Appellants' burden is to establish that the homestead entryman was the same person as the soldier from Missouri. While appellants' theory would tend to prove that the soldier from Illinois was not the entryman, it does not necessarily follow that the soldier from Missouri was the entryman.

Perhaps even more damaging to appellants' claim are the inconsistencies which appear in the records in connection with the Jephtha Martin from Missouri. Appellants rely on affidavits of this soldier's sons, John M. and William J. Martin, in an attempt to establish the identity of this soldier as the homestead entryman. Their testimony is based for the most part upon family conversations rather than personal knowledge. One of the affiants did state that his mother, the soldier's widow, died in 1884; however, Pension Bureau records indicate that she was paid a pension until May 4, 1894. Both affiants state their father died of malaria. The soldier's widow, in a declaration to obtain a pension under the Act of July 14, 1862, stated that her husband died of typhoid fever. She signed this document in 1889.

Finally, appellants admit that the signature of Jephtha Martin on the homestead application does not appear to be the same as the signature of the Missouri soldier as evidenced by payroll records of the Army. We agree. Appellants, however, suggest the theory

that the signature of Jephtha Martin on the homestead application was executed by the soldier's widow. They argue that a comparison of the signature on the homestead application with the widow's signature from pension records demonstrates that she, in fact, signed the homestead application. No persuasive showing has been made that the signatures were made by the same person.

In view of these discrepancies we are of the opinion that the application for cash payment was properly rejected.

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.

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Frederick Fishman, Member

We concur:

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Joan B. Thompson, Member

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Edward W. Stuebing, Member

