

DONALD RICHARD GLITTENBERG

IBLA 74-115

Decided March 26, 1974

Appeal from a decision of the Alaska State Office, Bureau of Land Management, declaring a notice of location of a headquarters site unacceptable for recordation. (AA-242)

Affirmed as modified.

Alaska: Headquarters Sites--Applications and Entries: Amendments

The filing of a notice of location of a headquarters site does not of itself invest the claimant with any rights in the land, nor does the mere marking and posting and clearing of brush along the lines.

Alaska: Headquarters Sites--Applications and Entries: Amendments

Where a notice of location of a headquarters site misdescribes the land claimed and no rights in the tract claimed have vested because there has been no substantial occupancy or improvement of the site, an effort to "amend" the location before more than five years later must be regarded as a new location notice rather than an amendment of the old notice, and an intervening closure of the land to entry will bar its acceptance.

Act of October 17, 1940 (Soldiers' and Sailors' Civil Relief Act)-- Alaska: Headquarters Site

Section 501 of the Soldiers' and Sailors' Civil Relief Act of 1940, 54 Stat. 1187, as amended, 50 U.S.C. App. § 561 (1970), which provides that no right to public

land initiated or acquired under the public land laws will be forfeited by an applicant due to military service, has no application to a headquarters site where no rights in the land had been acquired prior to an applicant's entry on active duty, and the closure of the land of entry.

APPEARANCES: Donald Richard Glittenberg, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Donald Richard Glittenberg has appealed from the July 20, 1973, decision of the Alaska State Office, Bureau of Land Management (BLM), which declared his notice of location of a headquarters site claim unacceptable for recordation. The notice was rejected after a field examiner inspected the area described in the appellant's notice of location and was unable to find any sign that the area had ever been used, occupied, improved or even staked out by the appellant. 1/

The notice of location of the claim was filed in the Anchorage office of the BLM on September 8, 1966, alleging occupancy and location of a claim along the shore of Lake Iliamna from August 13, 1966, in connection with mining activities carried on in that area. The filing of notice of location is required by the Act of April 29, 1950, as amended, 43 U.S.C. § 687a-1 (1970). That act provides that:

All qualified persons now holding or hereafter initiating claims * * * shall file a notice describing such claim in the manner specified by section 270 of this title in the United States land office for this district in which the land is situated * * * within ninety days from the date of the initiation of the claim. * * * Applications to purchase claims, along with the required proof or showing, must be filed within five years after the filing of the notice of claim under this section.

Section 270 of Title 43 provides, in part, that:

Said notice shall contain the name of the settler and the date of the settlement, and

1/ The appellant apparently did stake out a claim, but it was not the same land described on the land office plat map or on a map submitted by the appellant.

such a description of the land settled upon, * * * if unsurveyed, by reference to some natural object or permanent monument and by a statement, if desired, of the approximate latitude and longitude determined from a map of Alaska, as will identify the land * * *. (Emphasis added.)

The description of the claim filed by the appellant was based on two different maps, a United States Geological Survey (USGS) quadrangle map of the Lake Iliamna area and a land office plat map of a smaller area. Even a cursory comparison of the maps will reveal two significant differences: first, the location of the range and township boundaries are substantially different, and, second, the shorelines along Lake Iliamna, where the claim is located, are incongruent. Notwithstanding the fact that the plat map was clearly marked in bold letters as "UNSURVEYED," the appellant assumed that it was correct since it has a much larger scale than the quadrangle map. As a result of this assumption, the description of the claim submitted to the Alaska State Office according to either map is completely different from the area now claimed by appellant. The appellant asserts that the area actually staked out could have been found by relying on the land office plat map, even though the plat map is incorrect and the staked out area is not really in the area indicated on the plat map. Assuming, arguendo, that such an assertion is true, it is irrelevant since the area actually claimed is in a completely different area from that shown on the plat map and would apparently be so even on a corrected version of the plat map. For example, in the original notice of location the claim is described as lying on the:

NE shore of Pile Bay approximately 1 mile ESE of Pile Bay Village beginning at corner No. 1, a blazed pine tree on the shore of the lake at Latitude 153 degrees 54' and Longitude 59 degrees 46'.

This was later corrected to read:

Located on the S.E. shore of Pile Bay (approximately 1 mile W.S.W. of Pile Bay Village) approximately 1000 feet from the N.W. corner of U.S.S. 2895 in a west-south-westerly direction to the point of beginning at corner no. "1", a blazed pine tree marked no. "1", on the shore of Pile Bay at approximate Longitude 153 degrees 54'45" W. and Latitude 59 degrees 46'45" N. * * *

The description contained in a revised location notice submitted with this appeal reads:

Located on the SE shore of Pile Bay * * * approximately 2000 feet WNW of Pile Bay Village * * * beginning at

corner number 1, a blazed pine tree * * * on the shore of the lake at Lat. 153 degrees, 52 minutes, 45 seconds West and Long. 59 degrees, 46 minutes, 50 seconds North * * *

Therefore, the original location notice must be rejected since it clearly did not describe the land with sufficient accuracy to enable the Alaska State Office to identify it, as is required.

For several reasons the amended location notice submitted with this appeal cannot be accepted. First, and most important, it cannot be regarded as an amendment of the original notice, no application for purchase having been filed within the five-year term prescribed by statute. We must, therefore treat the purported amendment as a new notice of location which must be rejected because the tract actually claimed is no longer subject to entry. It was segregated from further entry under the headquarters site law by a notice of proposed classification of the area for multiple use purposes, 32 F.R. 3838 (1967). The area claimed was also withdrawn from further entry by the Alaska Native Claims Settlement Act, 43 U.S.C. § 1610(b)(1) (Supp. 1973), and by Public Land Order 5184, 37 F.R. 5587 (1972).

Next, we note from appellant's own statement of the facts that he had acquired no right to this land under the terms of the headquarters site statute prior to either the withdrawals or his entry into active military service. Section 10 of the Act of My 14, 1898, as amended by the Act of March 3, 1927, 44 Stat. 1364, as amended, 43 U.S.C. § 687a (1970), which provides for the acquisition of headquarters sites, has been uniformly interpreted to require some evidence of actual use and occupancy of the land. Lee S. Gardner, A-30586 (September 26, 1966); Solicitor's Opinion, M-36187 (November 12, 1953). As indicated by appellant, the only "improvements" that existed on this property prior to the withdrawals were corner monuments and brush lines. In this context it has been the continuing policy of this Department that:

One who files a notice of location of a headquarters site which does not show occupation, possession and the construction of improvements on the land acquires no rights in the land. The mere marking and posting of the corners of the tract does not constitute occupation or possession. Glenn R. Heatherly, Fairbanks 1652 (February 19, 1969). See also, Fred J. Rand, A-30228 (March 26, 1965); cf. Loran John Whittington, A-28823 (August 1961).

Therefore, until the locator performs the requisite acts to establish the right of purchase, his notice of location does not prevent a withdrawal from attaching to the land. See Kennecott Copper Corp., 8 IBLA 21, 33, 79 I.D. 636, 641 (1972). By his own statements it is evident appellant did not perform the requisite acts before going into the military service and before the land was withdrawn, or prior to the expiration of the five years during which full compliance was mandatory.

Finally, the appellant has asked for an extension of time to comply with requirements of the law regarding his claim, since he was on active duty with the United States Air Force from September 1967 to October 1972. The Soldiers' and Sailors' Civil Relief Act of 1940, as amended, 50 U.S.C. App. § 561 (1970), provides that no right to public lands shall be forfeited or prejudiced because of absence from the land or failure to do any act while serving on active duty with the armed forces. Since the appellant had not properly initiated or acquired any such right to public lands before entering active duty, this statute has no application. See, e.g., Warehime v. Forsyth, 46 L.D. 488, 489 (1918), which deals with a nearly identical statute enacted in World War I.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Alaska State Office (BLM) is affirmed as modified.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Joan B. Thompson
Administrative Judge

