

BOYD W. HAYNES

IBLA 74-145

Decided June 14, 1974

Appeal from decision of Fairbanks District Office, Bureau of Land Management, rejecting homestead final proof F-19175.

Set aside and remanded.

Homesteads: Military Service

Where a homestead entryman served in the United States Naval Reserve for 48 months during World War I, and part of his service was on active duty, and he received an honorable discharge, he is a "veteran of other wars," within the purview of 43 CFR Subpart 2096.

Homesteads: Military Service

Under 43 CFR Subpart 2096, where a "veteran of other wars" served in the Naval Reserve for a term beyond the period of World War I, he is entitled to credit against the time required to perfect title, for "the full term of the service under his enlistment," including the period elapsing between the date of his release from active duty and the date of his discharge.

Alaska: Homesteads – Homesteads: Cultivation – Homesteads:
Final Proof

Where a homestead entryman submits a final proof within the first year of his entry, and qualifies as a "veteran of other wars," with two years credit therefor, the cultivation requirement is waived.

Alaska: Homesteads – Homesteads: Generally

Settlement on land under the homestead laws marks the initiation of an entry which has a maximum life of five years. Acts performed thereafter in purported compliance with the homestead laws avail the entryman nothing.

The homestead law envisages entry thereunder for the purpose of farming. If one enters public lands under such law, knowing that the cultivability of the land is "Very Marginal & Not Practical," he is not manifesting the good faith required by that law.

APPEARANCES: Marlin D. Smith, Esq., Alaska Legal Services Corporation, Fairbanks, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Boyd W. Haynes has appealed from the October 5, 1973, decision of the Fairbanks District Office, Bureau of Land Management, which rejected his final proof on homestead entry F-19175. The decision below stated that because appellant had not cultivated 1/16 of the land embraced in his application, or ten acres, his final proof was rejected.

Appellant originally filed a Notice of Location of Settlement on June 30, 1972, for 160 acres cornering on Haynes Lake in section 7 of T. 22 S., R. 27 W., F.M., Alaska. In this Notice he stated his occupancy or settlement was originally made in October 1946, that a 20' x 20' cabin dated from the fall of 1946, and that he was currently rebuilding a cabin. He also indicated that he served in the United States Naval Reserve, "U.S.N.R.F.," from July 16, 1917, to December 20, 1918, and was released with an honorable discharge on July 15, 1921.

On June 15, 1973, appellant Haynes filed a homestead entry application. Therein he indicated that he had served in the U.S. Navy and "Navy Reserve" for the dates already mentioned. In support of this application, appellant filed his homestead entry final proof, the subject of the decision appealed to us. In his final proof, appellant indicated that he had resided on the land from June 1, 1972 to June 15, 1973, but showed no cultivation.

The decision of the Fairbanks District Office noted that pursuant to 43 CFR 2096.1-1(b), appellant submitted evidence of 17 months and 4 days of active duty time, applicable to the veteran's preference available for "veterans of other wars." However, the decision found appellant's final proof to be fatally defective because the cultivation required in the second year of entry, as noted above, must be 1/16 of the acreage claimed, or 10 acres in the instant case. This requirement is set forth in 43 CFR 2096.1-4(b)(2).

In his appeal to this Board, appellant advances two contentions. He argues that instead of credit for service being limited to 17 months, he should receive credit for the full period of his enlistment, four years, which would include both his term of active duty and his term of reserve duty. Appellant also argues, in the alternative, that pursuant to the Soldiers and Sailors Relief Act, as amended, 43 U.S.C. §§ 271, 272, 272a (1970), and a provision of the Homestead Act, as amended, 43 U.S.C. § 164 (1970), he is entitled to a homestead patent of 160 acres at the present time.

Appellant's contentions point to the two essential issues in this case:

1. What is the proper amount of credit, if any, for appellant's term of military service between July 16, 1917, and July 15, 1921?
2. What portion of a homestead entry held by a "veteran of other wars" must be cultivated, where final proof is filed within a year of the entry?

The record shows that Boyd W. Haynes enrolled in the United States Naval Reserve on July 16, 1917, was released from active duty on December 20, 1918, and was honorably discharged on July 15, 1921.

The Act of February 25, 1919, (40 Stat. 1161), 43 U.S.C. §§ 272a, 278, (1970) as amended by the Act of April 6, 1922 (42 Stat. 491), 43 U.S.C. §§ 233, 272, 273 (1970), provides in pertinent part, that the provisions of 43 U.S.C. §§ 271-272 (1970) apply to "all cases of military and naval service" during World War I. 43 U.S.C. § 272a (1970). Those latter provisions make available homesteads to those who served in the armed forces, and provided that the term of their service could be deducted from "the time otherwise required to perfect title * * *." 43 U.S.C. § 272 (1970).

The regulations issued under authority of these statutes define a "veteran of other wars" as one who received an honorable discharge " * * * and served with the United States Navy * * *"

between May 9, 1916 and March 3, 1921." 43 CFR 2096.1-1(b) Thus appellant is clearly a "veteran of other wars."

The regulations also provide that,

(a) [a]ny person, entitled to benefits under the regulations of this part, may obtain credit only for actual service, with the organizations and for the "statutory periods" specified in the regulations of this part, subject to minimum requirements specified in the regulations of this part except as follows:

* * * (4) Credit is granted for service by any "veteran of other wars" * * * for the full term of the service under his enlistment, although such term did not expire until after the war ceased.

43 CFR 2096.1-2

The definition of what is considered qualifying military service in the specific case at hand is embodied in the regulations, published on January 1, 1970:

* * * Credit for the service by a member of the Naval Reserve * * * who was called into active service * * * during World War I terminates upon the date of his actual discharge, and not upon the date he was ordered to inactive duty.

43 CFR 2033.1-2(b) (1970) (Emphasis supplied). ^{1/}

Lon Philpott, 13 IBLA 332, 335 (1973), appears to indicate that only active military service is applicable as a substitute for cultivation requirements. However, in Philpott, the applicant applied for credit under the Act of September 27, 1944, as amended, 43 U.S.C. §§ 279-284 (1970). That Act granted veterans of World War II and of the Korean conflict certain benefits as regards to public lands.

Appellant Haynes should receive credit for the entire term of his service as a member of the Naval Reserve who was called to active duty during World War I. Thomas D. Coons, 49 L.D. 402 (1923); see Mary Elizabeth Toland, 48 L.D. 236, 237 (1921).

^{1/} This sentence was omitted when the regulations were revised on June 13, 1970, 35 F.R. 9534. The section is now 43 CFR 2096.1-2 (1973).

Moving to the second issue presented herein, we note that appellant Haynes assertedly submitted his final proof within a year of making his entry. Under the regulations, no cultivation is required in the first year of entry for "veterans of other wars." 43 CFR 2096.1-4(b)(2) (1970). It has been recognized that veterans of World War I with

* * * more than 19 months service to be applied as credit could file final proof without showing any cultivation of the entered land provided that acceptable final proof was filed prior to the end of the first entry year.

Homer D. Smith, A-29351 (July 1, 1963).

This situation, unique to "veterans of other wars," a group which includes appellant, is not to be confused with that of veterans of World War II, who fall within the purview of 43 U.S.C. § 279 (1970). Veterans of World War II and the Korean conflict must cultivate, in good faith, "at least one-eighth of the area entered," Id., if final proof is filed at the end of the first entry year. Franklin P. Rambo, A-30068 (May 13, 1964).

We note that the statute allowing service time to be deducted from the time required to perfect title, 43 U.S.C. § 272 (1970), explicitly states that a homesteader seeking a patent must reside upon, improve and cultivate " * * * for a period of at least one year after he shall have commenced his improvements." Id. However, the Homestead Act, at 43 U.S.C. § 164 (1970), requires cultivation by the entryman of "not less than one-sixteenth of the area of his entry," beginning in the second year of that entry.

Appellant's term of military service, from July 16, 1917 to July 15, 1921, enables him to receive credit for the time otherwise required to perfect title, i.e., two years of the minimum three. Where a "veteran of other wars" properly files his final proof within the first year of his entry, there is no requirement of cultivation. This conclusion is confirmed by the chart in 43 CFR 2096.1-4(b)(2). Moreover, credit for post active duty service for World War I Naval Reservists explicitly was authorized in former regulations, e.g., 43 CFR 181.5(e) (1949); 43 CFR 181.5(e) (1954); 43 CFR 2033.1.2(b) (April 1964 ed.). To this extent the decision below is set aside.

The record, however, contains indications of noncompliance with the homestead laws.

The notice of location filed by appellant on June 30, 1972, states that settlement was commenced in 1946. The record contains other dates, e.g., June 1, 1972, as the commencement of such occupancy. If it is determined, as the record strongly suggests, that appellant has postponed "the filing of his notice [of location] for a considerable time [he] may find that he not only has lost credit for * * * residence but that he has also made it impossible for him to satisfy the requirements of the homestead law." Harold N. Aldrich, 73 I.D. 70, 75 (1966).

In response to question 10 of the final proof, relating to the character of the land, appellant described the cultivability of the lands as "Very Marginal & Not Practical." This raises a substantial question as to the bona fides of the appellant. The homestead law envisages entry thereunder for the purpose of farming.

These issues may be resolved through contest proceedings, if they cannot otherwise be resolved.

Accordingly, 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 set aside and the case remanded for appropriate action.

Frederick Fishman
Administrative Judge

We concur.

Joseph W. Goss
Administrative Judge

Martin Ritvo
Administrative Judge.

