

UNITED STATES
v.
HERMAN C. WEBB AND HAROLD C. WEBB

IBLA 74-179

Decided August 14, 1974

Appeal from decision (Oregon Contest No. 9151) of Chief Administrative Law Judge L. K. Luoma declaring the Gunshot placer mining claim null and void for lack of discovery.

Affirmed.

Mining Claims: Determination of Validity – Mining Claims: Discovery: Generally

To constitute a discovery upon a mining claim there must be physically exposed within the limits of the claim, minerals in such quality and quantity to warrant a prudent man in expending his labor and means, with a reasonable prospect of success, in developing a valuable mine.

Mining Claims: Contests–Mining Claims: Determination of Validity–Rules of Practice: Government Contests

A mining claim is properly declared invalid where the Government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of evidence that the claim is valid.

APPEARANCES: Herman C. Webb and Harold C. Webb, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Herman C. and Harold C. Webb have appealed from a decision dated November 19, 1973, of Chief Administrative Law Judge L. K. Luoma, which held the Gunshot placer mining claim null and void.

The contest was initiated by a complaint issued by the Department of the Interior on behalf of the Forest Service, United States Department of Agriculture, on July 26, 1972. The complaint charged that minerals have not been found within the limits of the claim in sufficient quantities to constitute a valid discovery and that the land embraced within the claim is nonmineral in character. After the mining claimant responded denying the charges, a hearing was held on December 21, 1972, in Baker, Oregon.

The appellants contend that they have a valid discovery. They assert that new and better locations have been discovered within the claim; that the land is mineral in character; and that they have suffered hardship in undertaking further development and exploration after the hearing.

It has long been established, where the Government contests a mining claim, it has the burden of presenting a prima facie case that there has been no discovery. The burden then shifts to the claimant to show by a preponderance of the evidence that his claim is valid. Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959). The Government is not obligated to prove affirmatively either that the land claimed is nonmineral in character or that no discovery of a valuable mineral deposit within the limits of a mining claim has been made. The government's mineral examiners are under no obligation to rehabilitate discovery points or to explore beyond the current workings of a mining claimant in order to verify a claimed discovery. Where a government mineral examiner testifies that he has sampled the exposed workings on a claim without finding sufficient mineral values and that he observed no other mineralization to sample, a prima facie case of no discovery has been made, and the burden is thereafter upon the mining claimant to show by a preponderance of the evidence that a discovery has been made. United States v. Gray, 8 IBLA 96 (1972); United States v. Benjamin L. Taylor and Martha L. Taylor, 8 IBLA 264 (1972); United States v. Wayne Winters d/b/a Piedras Del Sol Mining Company, 2 IBLA 329, 78 ID. 193 (1971).

Here the Forest Service mining engineer testified that he had examined the claim on two occasions and had taken a sample from the only discovery point indicated by the claimants. (Tr. 6, 7.)

The Forest Service mining engineer testified it was his opinion that a discovery of a valuable mineral deposit had not been demonstrated. (Tr. 12.) He based this opinion on the limited gold value (27.2 cents per cubic yard) reflected

by the assay of the sample taken from the claim. 1/ (Tr. 9.) This testimony together with the supporting exhibit of the assay certificate established the Government's prima facie case.

Appellants make the bare assertion of a valid discovery without any supporting evidence in the record. They testified at the hearing merely that pockets of gold may exist on the claim and pointed out the historical significance of the claim. (Tr. 17.) This falls far short of rebutting the Government's case. Further, their allegation that the land is mineral in character does not vitiate the requirement for a discovery. United States v. Calla Mortenson, 7 IBLA 123, 125 (1972).

Appellant's contention that they now have new and better locations within the claim is without merit. If it was appellants' intent to rely on other points of discovery, it was their responsibility to bring these locations to the attention of the Government's engineer at the time the claim was being investigated. United States v. H. A. Taylor, 11 IBLA 119 (1973); United States v. Gray, supra. Assertions that new evidence has been discovered can be used only to determine whether a new hearing should be held. United States v. Lutey, 76 I.D. 37 (1969), aff'd Lutey v. Department of Agriculture, No. 1817 (D. Mont. filed December 10, 1970). Since the claim, along with other land, has been withdrawn from mineral location since September 11, 1963, by P.L.O. 3230, 28 F.R. 10158, the claim had to be valid as of that date and discovery made thereafter would be of no avail. United States v. Foresyth, 15 IBLA 43, 47-48 (1974); Marvel Mining Co. v. Sinclair Oil and Gas Co., 75 I.D. 407, 419 (1968).

We reiterate the rule of discovery as stated in Castle v. Womble, 19 L.D. 455, 457 (1894):

[W]here minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine, the requirements of the statute have been met.

The standard and its application have been approved numerous times. United States v. Coleman, 390 U.S. 599 (1968); Best v.

1/ The calculation of the gold value of the sample was based on a gold value using the world price of gold at \$69 per ounce.

Humboldt Placer Mining Co., 371 U.S. 334 (1963); Chrisman v. Miller,
197 U.S. 313 (1905).

Nothing submitted by appellants, either at the hearing or with this appeal, would even remotely indicate the probability that further expenditure of labor and means would be justified in this case. Thus, the record compels a finding of no discovery.

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 affirmed.

Martin Ritvo
Administrative Judge

We concur.

Frederick Fishman
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

