

DOROTHY L. GORDON

IBLA 74-324

Decided November 21, 1974

Appeal from decision of California State Office, Bureau of Land Management, rejecting application to purchase a homesite under the Mining Claim Occupancy Act. R-1269.

Affirmed.

1. Mining Claim Occupancy Act: Principal Place of Residence – Mining Claim Occupancy Act: Qualified Applicant

An application filed under the Mining Claim Occupancy Act is properly rejected on the basis that the applicant is not qualified for relief under the Act where the record shows that the applicant did not live on the claim or use it as a principal place of residence during the qualifying period of time set forth in the Act.

2. Federal Employees and Officers: Authority to Bind Government

An applicant can gain no right to public land because she may have been informed, prior to the relinquishment of a mining claim, that upon abandonment of her claim she would be permitted to purchase a portion of the land embraced in the claim.

APPEARANCES: Dorothy L. Gordon, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Dorothy L. Gordon appeals to this Board from a decision dated May 13, 1974, whereby the California State Office, Bureau of Land Management, rejected her application R-1269 to purchase a residence site under the Mining Claim Occupancy Act 1/ for the reason that she

1/ Act of October 23, 1962, 30 U.S.C. §§ 701-709 (1970).

was not a qualified applicant. Appellant, together with her now deceased husband, Scott T. Gordon, and her daughter, Harlene M. Gordon, filed the application in connection with the Darlene lode mining claim. ^{2/}

The Darlene lode mining claim was located on March 1, 1955, by the Gordons in sec. 28, T. 28 S., R. 39 E., M.D.M., Kern County, California. Dorothy and Scott Gordon filed a relinquishment of the claim by instrument dated February 12, 1968.

Appellant states she is trying to obtain title to the one-acre plot within the former Darlene claim on which her cabin is situated. She asserts she has paid taxes to Kern County since 1963 or 1964 on its assessment of the cabin. She alleges her use of the cabin has been more than mere "weekend occupancy," but admits that the occupancy was intermittent. She states that she and her husband acquired the mining claim in anticipation of being able to spend more time on the claim after his retirement.

The Mining Claim Occupancy Act, supra, authorizes the Secretary of the Interior to convey to qualified applicants an interest up to and including fee simple, in and to an area of five acres or less within an unpatented mining claim. A qualified applicant is defined in section 2 of the Act which provides:

For the purposes of this Act a qualified applicant is a residential occupant-owner, as of October 23, 1962, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962.

Principal place of residence is defined in the regulations as follows:

The term "a principal place of residence" means an improved site used by a qualified applicant as one of his principal places of residence except during periods when weather and topography make it impracticable for use. The term

^{2/} An earlier application, Riverside 06958, filed by the Gordons under the Mining Claim Occupancy Act for part of the Darlene mining claim was rejected as being premature because, although a statement had been issued that the subject mining claim is believed to be invalid, no relinquishment of the mining claim had been filed by applicants, nor had the Secretary of the Interior ever declared the claim invalid.

does not mean a site given casual or intermittent residential use, such as for a hunting cabin or for weekend occupancy.

43 CFR 2550.0-5(d).

Appellant fails to meet the standards of a qualified applicant under the statute and the regulations. She places emphasis in differentiating her situation from that of use of the land for a hunting cabin or weekend occupancy. However, that terminology is illustrative rather than exclusive. The evidence indicates that the appellant and her family used the cabin only as a temporary retreat, not as a principal place of residence, even though the occupancy may well have been for periods exceeding a week at a time. The record clearly shows that there was no permanent improvement upon the land within the Darlene mining claim before 1959. Absent such a facility, a principal place of residence on the claim seems to be only a remote possibility.

While it is true that the Act only requires a principal place of residence, rather than the principal place of residence, the Act does require that the claim had been used as such a principal place of residence for the full seven years immediately preceding July 23, 1962. Intention to effect such residence after 1962 cannot inure to appellant's benefit.

[1] An application filed under the Mining Claim Occupancy Act is properly rejected on the basis that the applicant is not qualified for relief under the Act where the record shows that the applicant did not live on the claim or use it as a principal place of residence during the qualifying period of time set forth in the Act. True E. Wess, 14 IBLA 38 (1973).

This Department has noted, with judicial approval, that the Mining Claim Occupancy Act was enacted by the Congress as a relief measure designed to aid qualified people on whom a hardship would be visited if they were required to move from their long-established homes on invalid mining claims. Scott V. Brown, 13 IBLA 319 (1973); Walker v. Udall, 409 F.2d 477 (9th Cir. 1969); Funderberg v. Udall, 396 F.2d 638 (9th Cir. 1968). The record of this case indicates that the Gordons resided at 3108 Poplar Blvd., Alhambra, California, from 1955 through 1967. Since the death of Mr. Gordon in 1971, appellant has been living in Monrovia, California. Our decision herein will not require appellant to move from her actual "long-established home."

[2] We are of the opinion that the "hardship" contemplated by the Act would not be visited upon the appellant by our determination that she is not a qualified applicant. Reliance by appellant upon

alleged statements of government employees that she should be permitted to acquire the cabin site does not alter our decision. An applicant can gain no right to public lands greater than sanctioned by law, even though she may have been informed prior to the relinquishment of her mining claim that, upon abandonment of the claim, she would be permitted to purchase the portion of the claim occupied by her cabin. Harold E. Trowbridge, A-30954 (January 17, 1969).

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.

Douglas E. Henriques
Administrative Judge

We concur.

Frederick Fishman
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

