

RALPH E. HOLAN

IBLA 75-119

Decided February 14, 1975

Appeal from a decision of the Folsom District Office, Bureau of Land Management, rejecting two section 15 grazing lease applications.

Affirmed.

1. Grazing Leases: Application -- Grazing Leases: Preference Right Applicants

The regulations require that a qualified applicant for a section 15 grazing lease be engaged in the livestock business and have a need for the land. Therefore, unless an applicant owns livestock for business purposes, or is a recognized livestock operator who temporarily or due to circumstances beyond his control does not own any livestock, he is not qualified to be awarded a lease.

APPEARANCES: Ralph E. Holan, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Ralph E. Holan has appealed from a decision of the Folsom District Office, Bureau of Land Management (BLM), dated May 20, 1974, rejecting two grazing lease applications under section 15 of the Taylor Grazing Act, 43 U.S.C. § 315m (1970), for certain land in Calaveras County, California. The BLM rejected the application because Holan was not a qualified applicant for a grazing lease; that is, one who is engaged in the livestock business and has a need for the grazing use of the land.

Holan requests that the decision be reversed because he would be in the livestock business if BLM were to grant him the lease. 1/

1/ Holan also asks us to award him rights to a recently filed mining claim. We have no information concerning his mining claim. If he is attempting to protest against some action by BLM employees,

Also, his children who are in a 4-H program would need the land to supply forage for their cattle and sheep.

In Ruth E. Han, 13 IBLA 296, 80 I.D. 698 (1973), the Board considered whether Han was a qualified applicant for a section 15 grazing lease. The BLM District Manager determined that Han was not a qualified applicant for a grazing lease under 43 CFR 4121.1-1(a), which requires that the applicant be engaged in the livestock business, have a need for the grazing use of the land and be a citizen of the United States. At the time BLM rejected her application, Han controlled only two horses. She did not assert in her appeal that she was actually in the livestock business and needed the land for grazing purposes. 13 IBLA at 299-301, 80 I.D. at 699-700. The Board held that Han was not a qualified applicant for a grazing lease.

The facts here are similar to those in Han. Holan alleged ownership of an unspecified number of horses and cattle. The range conservationist states that appellant owns no cattle and presently controls one horse. Holan has not alleged that he is actually in the livestock business and has a need for grazing land.

As the Board pointed out in Han, the section 15 grazing regulations were changed in 1968. 33 F.R. 11516. The revised regulations were modeled after the Federal Range Code for section 3 permits and licenses in grazing districts authorized by 43 U.S.C. § 315 (1970). Memorandum from the Director, Bureau of Land Management, to Secretary of the Interior, June 4, 1968. The 1968 revision made the standard for a qualified applicant for a section 15 grazing lease, 43 CFR 4121.1-1(a), similar to the standard for a section 3 applicant, 43 CFR 4111.1-1(a). The only difference is that 43 CFR 4121.1-1(a), in addition to requiring the applicant to need the land for grazing. The latter requirement is not expressly imposed on section 3 applicants. Despite this difference, the cases interpreting the section 3 requirements are helpful in determining the meaning of 43 CFR 4121.1-1(a).

In a section 3 case, Myrtle Colvin, IGD 245 (1941), Colvin applied for a license to graze 100 cattle. The record showed that she did not own any cattle at the time she filed her application. At that time the Federal Range Code required that a

(Fn. 1 Cont.)

he should address his protest to the BLM State Office. Our jurisdiction is limited to consideration of actual appeals from actual written adverse decisions of BLM officers. Appellant does not point to any such decision.

grazing applicant "own livestock." 43 CFR 501.3 (1940). In interpreting the then-existing regulation, the decision commented:

This does not mean that recognized livestock operators who possess the necessary qualifications as to citizenship and ownership or control of base property should in all cases be denied licenses because, at the time of the application, they failed to show ownership of livestock. Such failure may be due to losses through disease, fire, foreclosure, or other causes, and to deny an applicant a license under such circumstances would work a serious hardship and injustice. The section of the Code should, therefore, be construed more liberally and the test should not be whether or not an applicant owns livestock but whether or not he is a recognized operator whose failure to own livestock is only a temporary condition or is due to circumstances over which he had no control.

IGD at 250. The decision concluded that Colvin was not a recognized livestock operator because she had never carried on a livestock operation that involved a substantial use of private or public land. In addition, it noted that her failure to own livestock had persisted for two years and was not a temporary condition or due to circumstances beyond her control.

Shortly after the Colvin decision, the Department changed the requirements for a qualified applicant for a section 3 license. 7 F.R. 7654 (1942). The Department substituted "engaged in the livestock business" for "owns livestock," 43 CFR 501.3(a), now decision. The Department applied the new standard in John F. MacPherson, IGD 566, 567-68 (1952), to deny a grazing license to an applicant who was not in the livestock business at the time of his application.

[1] Because 43 CFR 4111.1-1(a) and 43 CFR 4121.1-1(a), are essentially similar, we will apply the same standard to both section 3 and section 15 applicants. Unless an applicant for a section 15 grazing lease either owns livestock for business purposes or is a recognized livestock operator who temporarily or due to circumstances beyond his control does not own any livestock, he is not qualified to be awarded a lease. Proposed or future ownership of livestock is not sufficient. Holan had not alleged that such business is temporary or due to circumstances beyond his control. He is not a qualified applicant for a grazing lease. Cf. George T. McDonald, 18 IBLA 159 (1974).

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.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joseph W. Goss
Administrative Judge

