

JOHN C. BRIGGS

IBLA 75-516

Decided September 4, 1975

Appeal from the decision of the Alaska State Office, Bureau of Land Management, ordering appellant to relinquish a portion of the lands applied for in his additional homestead entry application AA-3028.

Set aside and remanded.

1. Additional Homesteads -- Alaska: Homesteads

The land in an additional homestead entry application under the Act of April 28, 1904, as amended, 43 U.S.C. § 213 (1970), must be contiguous to the applicant's original homestead. Neither that Act nor regulations issued thereunder require that tracts of land in such an additional entry application be contiguous to each

other. The requirement of 43 CFR 2567.1(c) that land in a homestead entry application in Alaska must be in a contiguous body is maintained by the fact that the land in the additional entry must be contiguous to the original homestead.

APPEARANCES: John C. Briggs, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

On July 15, 1968, John C. Briggs filed additional homestead entry application AA-3028 in the Alaska State Office, Bureau of Land Management. The application was for two separate tracts totaling 40 acres as an additional entry under section 2 of the Act of April 28, 1904 (33 Stat. 527), as amended, 43 U.S.C. § 213 (1970). The tracts are not contiguous to each other, but each adjoins the applicant's patented homestead entry. The State Office informed appellant in a decision dated April 7, 1975, that unless he relinquished one or the other of the two tracts, his application would be rejected and his claim canceled. Appellant appeals from that decision.

The State Office decision stated that appellant "filed application to enter 40 acres of surveyed lands under the act

of May 14, 1898 (30 Stat. 409; 43 U.S.C. 161 (1970))." ^{1/} The decision then quoted 43 CFR 2567.1(c) which requires that lands applied for in a homestead application in Alaska "must be contiguous." Therefore, the decision concluded, appellant must relinquish one or the other of the tracts.

Appellant points out that he has received patent to his original homestead of 120 acres. He acknowledges that he has not applied for tracts contiguous with each other. However, he states that each of the two tracts in his application is contiguous to his original homestead. He argues that "it is obvious that the intent of the regulation is being fulfilled." We agree with appellant that the State Office decision was in error.

[1] In its decision the State Office stated, as quoted above, that appellant was applying to enter land under 43 U.S.C. § 161 (1970). That statute is the general homestead law authorizing entry of unappropriated public lands. 43 CFR 2567.1(c) is a regulation applicable to homestead entries under 43 U.S.C. § 161 (1970) for land in Alaska. See 43 U.S.C. § 270 (1970). However, appellant clearly stated on his application, as required by 43 CFR 2512.2(b), that he was applying for an additional homestead entry under the

^{1/} Section 1 of the Act of May 14, 1898, 30 Stat. 409, now codified as 43 U.S.C. § 270 (1970), applies the homestead laws of the United States to Alaska, including 43 U.S.C. §§ 161, 213 (1970). See the discussion, infra.

Act of April 28, 1904 (43 U.S.C. § 213 (1970)). Therefore, the requirements of 43 CFR 2567.1(c) that the land in a homestead application must be in a contiguous body should be applied within the purpose and requirements of 43 U.S.C. § 213 (1970) and regulations issued thereunder.

Applications for additional homestead entries in Alaska under 43 U.S.C. § 213 (1970) are governed by 43 CFR 2567.4(c), which states in part:

(c) Additional entries. Any person otherwise qualified who has made final proof on an entry for less than 160 acres may make an additional entry for contiguous land under the act of April 28, 1904 * * * for such area as when added to the area previously entered will not exceed 160 acres. The requirements in connection with such entries are set forth in * * * [§] 2512.2 of this chapter. * * *

The meaning of the words "contiguous land" in the above regulation becomes evident from the first paragraph of 43 U.S.C. § 213 (1970):

Any homestead settler who has heretofore entered, or may hereafter enter, less than one-quarter section of land, may enter other and additional land lying contiguous to the original entry which shall not, with the land first entered and occupied, exceed in the aggregate one hundred and sixty acres. [Emphasis added.]

43 CFR 2512.2(b), referred to in 43 CFR 2567.4(c), supra, repeats verbatim the emphasized portion of the above statute.

The purpose of 43 U.S.C. § 213 (1970) is to allow homestead settlers to obtain the full 160 acres they would have been allowed in their original homestead entry applications. The requirement in 43 CFR 2567.1(c) that the lands applied for in a homestead application be contiguous is maintained by the requirement that the additional entry lands be contiguous to the original homestead. The end result, as in the case before us, is a 160-acre contiguous body of land. Where such a result is obtained and an application otherwise meets description requirements, we see no prohibition in the law or regulations against an additional entry consisting of two tracts both contiguous to the original entry, but not to each other.

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 set aside and the case remanded for further consideration consistent with this opinion.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

