

RICHARD E. AND PHYLLIS LEE

IBLA 76-43

Decided October 30, 1975

Appeal from the dismissal of the protest against mineral patent application F-13922 (Alaska Placer Co.).

Dismissed.

1. Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals: Statement of Reasons

A statement of reasons which does not point out the grounds upon which the decision appealed from is in error will be treated in the same manner as an appeal in which no statement of reasons is filed and the appeal will be dismissed.

2. Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals: Service on Adverse Party

Appellant's failure to timely serve and prove service of appeal on adverse party named in the decision from which the appeal is taken will subject the appeal to summary dismissal.

APPEARANCES: Lyle R. Carlson, Esq., Fairbanks, Alaska, for the appellants.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On March 1, 1973, Richard E. Lee and Phyllis Lee filed in the Alaska State Office of the Bureau of Land Management, a protest against mineral patent application F-13922 of Alaska Placer Company. The protest enumerated eight specific allegations as reasons for disallowing the patent application.

By its decision of May 30, 1975, the Alaska State Office dismissed the protest. <sup>1/</sup> In its text the decision considered and rejected each of the eight allegations in an item-by-item format.

Richard E. and Phyllis Lee, by their attorney, then filed a notice of appeal from the dismissal of their protest.

[1] The only statement of reasons for appeal is incorporated in a letter which appellant Richard E. Lee wrote to his attorney at the time the attorney was instructed to file this appeal. Appellants' counsel filed a timely notice of appeal which stated, in part, "Attached hereto and incorporated by reference is a letter dated June 17, 1975, signed by Richard E. Lee, stating his intention to appeal together with a statement of reasons which may be supplemented." The only reasons given in the letter are the following:

Our main point of contention, that neither Alaska Placer nor any representative were on the property at any time during the fiscal year 9/1/71 through 8/31/72, is basis enough for appeal. It is our belief that this constituted abandonment of the property.

Further, our re-staking of the property in the fall of 1971 carried through the fiscal year ending 8/31/72, acceded to our acquisition of the property following Alaska Placers' failure to perform assessment work within the prescribed time.

Neither the allegation of abandonment nor the alleged re-staking of the claims by the appellants was mentioned in the appellants' protest or in the decision dismissing the protest. The "statement of reasons for appeal," therefore, does not purport to show how the decision appealed from is in error. Instead, it is an attempt to supplement the original protest by raising new allegations. Even if the reasons stated could be linked inferentially to the reasons enumerated in the protest, the statement fails to point out any error in the decision in its rejection of those reasons. No additional reasons for appeal were filed.

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<sup>1/</sup> Although the decision stated that the protest was "summarily" dismissed, it was not actually a summary dismissal, but a dismissal based upon a consideration of the merits of the protest.

The rules of practice, 43 CFR 4.412, require an appellant to state reasons in support of his appeal. These reasons must clearly state the asserted errors in the decision which is the subject of the appeal. Where a statement of reasons does not assert any errors, the appeal is subject to summary dismissal. 43 CFR 4.402. A statement of reasons which does not point out the grounds upon which the decision appealed from is in error will be treated in the same manner as an appeal in which no statement of reasons is filed, and the appeal will be dismissed. United States v. Coppridge, 17 IBLA 323 (1974), and cases cited therein.

[2] Moreover, the final paragraph of the decision appealed from clearly stated that if an appeal is to be taken the adverse party (Alaska Placer Company) must be served with a copy in order to avoid summary dismissal, and it provided the name of the adverse party's agent and the address where he could be served. Despite this admonition, appellants have not shown such service, as required by 43 CFR 4.401(c). The appeal, therefore, is also subject to summary dismissal for this reason. 43 CFR 4.402(b) and (c); 43 CFR 4.413.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Edward W. Stuebing  
Administrative Judge

We concur:

Anne Poindexter Lewis  
Administrative Judge

Joan B. Thompson  
Administrative Judge

