

UNITED STATES
v.
ROBERT L. TAYLOR

IBLA 76-359

Decided May 5, 1976

Appeal from decision by Administrative Law Judge E. Kendall Clarke declaring Skyline Mine Nos. 1-6 lode mining claims null and void (Contest OR-8497).

Affirmed.

1. Mining Claims: Discovery: Generally

The discovery of a "valuable mineral deposit" has been made where 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.

2. Administrative Procedure: Burden of Proof--Mining Claims:
Contests--Mining Claims: Determination of Validity

When the United States contests a mining claim it has by practice assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint; the burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case.

3. Administrative Procedure: Burden of Proof--Mining Claims:
Contests--Mining Claims: Determination of Validity

The United States has established a prima facie case of the invalidity of a mining claim when a qualified government mining examiner testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable mineral deposit.

4. Mining Claims: Discovery: Generally

Evidence which will not justify development of a claim but may justify further exploration is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

5. Mining Claims: Hearings--Rules of Practice: Evidence

Evidence tendered on appeal from an adverse decision in a mining claim contest can only be considered for the limited purpose of deciding whether a further hearing is warranted.

APPEARANCES: Robert L. Taylor, pro se; Elden M. Gish, Esq., Office of the General Counsel, U.S. Department of Agriculture, Portland, Oregon, for appellee.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Robert L. Taylor appeals from the decision of Administrative Law Judge E. Kendall Clarke declaring null and void lode mining claims Skyline Mine No. 1, a/k/a Skyline Mine, and Skyline Mine Nos. 2, 3, 4, 5 and 6. The claims are located in the Rogue River National Forest. These claims had been declared null and void in an earlier decision, affirmed by the Board in United States v. H. A. Taylor, 11 IBLA 119 (1973). However, appellant was not named in that contest complaint.

The new contest complaint (OR-8497), as was the original complaint, was filed by the Bureau of Land Management on behalf of the Forest Service, Department of Agriculture and charged that minerals had not been found within the limits of the claims "in sufficient quantities to constitute a valid discovery." At the hearing, held on March 14, 1975, Colver F. Anderson, the Forest Service mining engineer who had testified in the first hearing on these claims held in 1972, testified for the United States. Appellant testified in his own behalf.

At the conclusion of the testimony, Judge Clarke suggested that appellant and counsel for the Forest Service confer and agree to a procedure for further sampling (Tr. 24-25). Upon representations that the Forest Service was willing to wait until July 1, 1975, to see if any points of discovery had been made and that the Forest Service mineral examiner and Mr. Taylor would then jointly take samples, Judge Clarke orally ordered that: (1) appellant was to prepare the tunnels or other points of discovery for taking samples; (2) when appellant had completed his preparations, but no later than July 1, 1975, he was to notify the Forest Service; (3) Mr. Anderson and appellant were to jointly take the samples; (4) the samples were to be divided and the Forest Service was to assay its portion for gold and silver; (5) the assay reports were to be submitted to Judge Clarke by August 1, 1975; and (6) if Judge Clarke did not receive the reports by August 1, he would make his determination on the record as it then existed (Tr. 25-29).

On August 15, 1975, the Forest Service filed a motion for judgment. By affidavit attached to the motion, counsel for the Forest Service asserted to Judge Clarke that appellant had not contacted the Forest Service concerning the points of discovery. Judge Clarke then issued his decision on November 6, 1975.

On appeal, appellant asserts that he and another went to the claims on July 10, 1975, to put the machinery in operating condition. Appellant gives no explanation for his apparent failure to do anything on the claims prior to July 1, as ordered by the Judge. He alleges he notified the Forest Service that the vein on No. 1 was open for sampling after July 16, 1975, but does not say to whom the notification was made. Appellant argues that a November 12, 1975, assay report shows that he has made a discovery of a valuable mineral deposit. He contends he has now exposed from 85 to 100 tons of ore that could be taken out at low cost. He makes other assertions which have little or no relevance to the pertinent issues raised in this appeal.

Counsel for the Forest Service has answered, contending that the 1975 assay report should not be considered as it was not part of the record below. He also contends that appellant's assertions should be disregarded, and that there is no evidence supporting the validity of the claim. He requests the Judge's decision be sustained and the appeal dismissed.

[1] In order for a mining claim to be considered valid under the Act of May 10, 1872, as amended, 30 U.S.C. § 22 et seq. (1970), the claimant must show, among other things, a discovery of a "valuable mineral deposit." A discovery of a "valuable mineral deposit" occurs:

* * * where 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 * * *.

Castle v. Womble, 19 L.D. 455, 457 (1894).

[2, 3, 4] When the United States contests a mining claim it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint; the burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case. United States v. Zweifel, 508 F.2d 1150, 1157 (10th Cir. 1975); United States v. Springer, 491 F.2d 239, 242 (9th Cir. 1974); United States v. Clarion W. Taylor, Sr., 19 IBLA 9, 82 I.D. 68 (1975). The United States has established a prima facie case when a qualified mining engineer testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable mineral deposit. United States v. Hallenbeck, 21 IBLA 296, 300 (1975); United States v. Clark, 18 IBLA 368, 370 (1975).

The testimony of mining engineer Anderson at the 1972 hearing was found to constitute such a prima facie case at the very least. United States v. H. A. Taylor, *supra* at 123. At appellant's hearing, Judge Clarke took official notice of that testimony and of Mr. Anderson's report which was introduced into evidence at the 1972 hearing (Tr. 8-10). At appellant's hearing, Mr. Anderson testified that his examination of the claims since the 1972 hearing showed that there is no operating mine on any of the claims, and that although there has been some additional exploratory work on No. 1, the claims are basically in the same condition as they were in 1972 (Tr. 12-14).

Appellant attempted to counter Mr. Anderson's testimony by describing four assay reports in his possession. Three of the reports were of samples taken by appellant's father from a tunnel that caved in during 1959 or 1960 (Tr. 18-20, 21-22). Appellant was not sure of the technique used in taking the samples. Two of these reports were alleged to show gold in a quantity which, if supported by additional evidence, might have constituted a discovery. The fourth report, dated May 6, 1974, as described by appellant, showed gold in approximately the same quantity as the assay report on Mr. Anderson's samples (Compare Tr. 20 with Ex. 10). 1/

1/ Although the assay reports were identified as Exhibits A through D (Tr. 18), apparently the reports themselves were not actually received in evidence and are not part of the record before us except as described by Mr. Taylor.

Appellant's evidence was insufficient to overcome the Government's prima facie case and failed to show the discovery of a valuable mineral deposit at the time of the hearing on any of the claims. It certainly was insufficient to warrant a prudent man to expend time and money with a reasonable expectation of developing a valuable mine. Even if the evidence would warrant further exploration of the claims, such evidence would not be sufficient. Evidence justifying further exploration, rather than development of a mine, is not sufficient to establish that a discovery of a valuable mineral deposit has been made. United States v. Fichtner, 24 IBLA 128, 130 (1976); United States v. MacIver, 20 IBLA 352, 356-58 (1975). Judge Clarke was correct, therefore, in holding the claims null and void based on the record before him.

[5] We turn now to appellant's assertions concerning work done on the claims after July 1 and the assay report he has submitted on appeal. The assertions, as well as the report, are a tender of additional evidence not in the hearing record. Evidence tendered on appeal from an adverse decision in a mining claim contest can only be considered for the limited purpose of deciding whether to grant a further hearing. In order to warrant the ordering of a new hearing, there should be reasons given to show that there is a substantial equitable basis for holding the new hearing and also there should be a substantial expectation that the new hearing would be productive of more conclusive evidence on the issues. United States v. Fichtner, *supra* at 358-59; United States v. McKenzie, 20 IBLA 38, 44 (1975); United States v. Stevens, 77 I.D. 97, 105 (1970); United States v. King, A-30867 (February 28, 1968).

At the conclusion of the hearing, Judge Clarke prescribed certain conditions, described above, to his consideration of additional assay work to be performed on the mining claims. This was to enable appellant to reopen a caved-in tunnel on a claim as well as to prepare the precise points of discovery appellant desired to have sampled. Appellant failed to meet the Judge's conditions and has given no reason for his failure to have the work ready by July 1. His statements concerning his actions after that date are not convincing in view of his failure to submit any information or explanation to the Judge within the time required. Judge Clarke afforded appellant adequate opportunity to furnish additional evidence. Because of this and because appellant's tender is insufficient to demonstrate that a further hearing might result in a different conclusion, we shall not prolong this matter by ordering an additional hearing. The claims were properly declared null and void.

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:

Martin Ritvo
Administrative Judge

Douglas E. Henriques
Administrative Judge

