

UNITED STATES
v.
EDISON T. SCHAEFER

IBLA 76-630

Decided February 23, 1977

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring a lode mining claim null and void. OR 14694 (Wash).

Affirmed.

1. Administrative Procedure: Administrative Procedure Act --Contests and Protests: Generally--Mining Claims: Contests

Where the answer to a mining contest complaint denying the charges is not timely filed, the charges will be deemed admitted and the contest will be decided without a hearing. 43 CFR 4.450-7(a).

APPEARANCES: Edison T. Schaefer, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Edison T. Schaefer appeals from the April 26, 1976, decision of the Oregon State Office, Bureau of Land Management (BLM), which declared the E.T.S. No. 1 lode mining claim null and void. The claim is located in section 31, T. 37 N., R. 14 E., Willamette Meridian, Whatcom County, Washington. The contest proceedings in this case were commenced by issuance of a complaint charging that the claims in question are invalid because (1) minerals of a variety subject to location under the mining laws have not been found and (2) minerals have not been found within the limits of the claim of sufficient quality and/or sufficient quantity to constitute a valid discovery.

Contestee received the complaint by personal service on February 28, 1976. No answer was made by the contestee. Pursuant to 43 CFR 4.450-6, 4.450-7, and 4.451-2, when an answer was not

received within 30 days, the charges were deemed admitted, and the Oregon State Office, BLM, declared the claims null and void without a hearing.

In his appeal, Schaefer does not contend that he filed an answer timely or otherwise, but refers only to the date on which the claim was located and to the fact that the land may be made part of a recreational area. These contentions bear neither on the validity of the claim nor on the consequences of his failure timely to file an answer.

[1] As the State Office pointed out the pertinent regulations, supra, require the contestee to file an answer within 30 days after service of the complaint. If an answer is not filed within that time, the allegations of the complaint will be deemed admitted and the manager will decide the case without a hearing. Thus it was proper for the State Office to decide the case and on the record to declare the mining claim null and void. United States v. Albert S. Hunter, et al., 22 IBLA 28 (1975); United States v. Sainberg, 5 IBLA 270 (1972), aff'd Sainberg v. Morton, 363 F. Supp. 1259 (D. Ariz. 1973).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of Interior, 43 CFR 4.1, the decision of the Oregon State Office is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge

