

UNITED STATES
v.
WAYNE E. HIGHLEY

IBLA 77-39

Decided April 7, 1977

Appeal from a decision of Administrative Law Judge Robert W. Mesch declaring four lode mining claims and a millsite claim null and void. C 596.

Affirmed.

1. Mining Claims: Contests! ! Mining Claims: Determination of Validity! ! Rules of Practice

A mining claim is properly declared null and void where the government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of the evidence that a discovery has been made.

2. Millsites: Generally! ! Mining Claims: Millsites

Where a millsite is not being used for mining or milling purposes in connection with a mining claim owned by the owner of the millsite, and at the time of contest there is no quartz mill or reduction works on the site, the millsite must be declared null and void.

APPEARANCES: David Cumming, Esq., Carvell & Mullens, Colorado Springs, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Wayne E. Highley has appealed from a decision by Administrative Law Judge Robert W. Mesch, dated September 21, 1976, which declared the Beryllium No. 1, the Beryllium No. 2, the Beryl No. 4, and the

E. Beryl lode mining claims, and the Beryl millsite claim null and void for lack of discovery of a valuable mineral deposit. The claims are located in Sections 20 and 21, T. 11 S., R. 72 W., 6th P.M., Park County, Colorado.

On July 15, 1975, the Bureau of Land Management initiated contest proceedings by filing a complaint charging that:

- (a) No valuable mineral deposits have been discovered within the limits of the claims;
- (b) The Beryl millsite is not being used or occupied for mining or milling purposes in connection with a valid mining claim;
- (c) There is no quartz mill or reduction works on the Beryl millsite.

The complaint described the millsite as being "The W. E. Highley millsite claim a/k/a Beryl millsite claim."

A hearing was held on April 23, 1976, in Colorado Springs, Colorado.

Warren C. Roberts, a geologist employed by the Forest Service, testified that he examined the claims on January 12, 1972, June 14, 1972, June 13 and 14, 1973, and April 22, 1976. He took one sample from the East Beryl lode, a site indicated by appellant to be the most promising prospect for beryllium. The assay return for this sample shows 0.01 percent beryllium oxide, an amount which the geologist considered too insignificant to constitute a mineral deposit or source of beryllium ore (Tr. 11). The geologist testified further that appellant could show him no other sites on the claims where evidence of mineralization might be found, and that his own examination revealed none. In his opinion there was no discovery of a valuable mineral and a prudent man would not be justified in the further expenditure of labor and means in the expectation of finding a valuable deposit (Tr. 18). The witness described the Beryl millsite as being used for living quarters and equipment storage. He stated that there was no quartz mill or reduction works at the site (Tr. 21-23).

Appellant Wayne E. Highley testified that he had not produced any ore from the claims and had not conducted any core drilling operations thereon (Tr. 36). He stated that the Beryl millsite was not the same as the W. E. Highley millsite, that the two were separate millsites, that he had never claimed, filed on, or used the W. E. Highley millsite, and that he had no interest in

it (Tr. 38). The Beryl millsite, however, was intended for use with the contested claims. It had a small crusher on it and served appellant in his exploratory work (Tr. 59).

The Judge concluded that the lode mining claims were invalid for lack of discovery of a valuable mineral deposit and that the millsite claim was invalid because it was not being used for mining or milling and had no quartz mill or reduction works.

Appellant has submitted the following statement of reasons on appeal:

1. The decision purports to declare the Beryllium No. 1 lode claim null and void. There is no Beryllium No. 1 claim and that fact was proven at the hearing.
2. The decision purports to find the Beryl millsite claim null and void. There is a Beryl millsite but is not also known as the W. E. HIGHLEY millsite and the notice in this matter to Contestee indicated that the W. E. HIGHLEY millsite would be contested.
3. The record of the hearing is inadequate to show the location or dimensions of any of the claims which are purported to be declared null and void.
4. The decision of the Administrative Law Judge is based upon the testimony of a Forest Service Geologist who testified as to samples he took, but was plainly confused as to what claims he pulled samples from.

[1] As this Board has frequently held, when the government contests a mining claim it has assumed the burden of making a prima facie case that the claim is invalid. United States v. Arizona Mining and Refining Company, Inc., 27 IBLA 99 (1976); United States v. Reynders, 26 IBLA 131 (1976); United States v. Gold Placers, Inc., 25 IBLA 368 (1976). A prima facie case is established where a government mineral examiner gives his expert opinion that he examined the claim and found insufficient values to support the assertion that a valuable mineral deposit has been discovered. Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959); United States v. Reynders, *supra*; United States v. Ramsey, 14 IBLA 152 (1974). Once the government has established a prima facie case, the burden shifts to the contestee to show by a preponderance of the evidence that a valuable mineral deposit was discovered on the claim. United States v. Zweifel, 508 F.2d 1150 (10th Cir. 1975); United States v. Springer, 491 F.2d 239 (9th Cir.), *cert. denied*, 419 U.S. 234 (1974).

Appellant's 1st, 3rd, and 4th statements on appeal are not addressed to the substance of the decision below and/or are contrary to the facts of record. Witness Highley specifically stated at the hearing that the Beryllium No. 1 lode claim was one of the claims in issue (Tr. 54). The transcript shows agreement among the parties as to what claims were being contested and in no way supports the allegation that the Forest Service geologist was confused as to the claims he actually examined in the contestee's presence and thereafter. Appellant's activities on the claims were limited to prospecting and exploration. He has not shown that a valuable mineral deposit existed in sufficient quantity to justify a prudent man in investing in mining operations.

[2] Where a millsite claim is not being used for mining or milling in connection with mining claims owned by the owner of the millsite, and at the time of the contest there is no quartz mill or reduction works on the site, the millsite must be declared null and void. United States v. Dietemann, 26 IBLA 356 (1976); United States v. Almgren, 17 IBLA 295 (1974).

With respect to the millsite the Judge concluded:

The evidence establishes that there is no quartz mill or reduction works on the millsite and that the land is not being used for mining or milling purposes, but only as a residence and incidentally as a site for a small crusher used to crush samples obtained in prospecting or exploration activities.

Appellant's second statement does not controvert this conclusion. Appellant pointed the Beryl millsite out to the geologist when the latter was on the property (Tr. 19) and conceded at the hearing he had no interest in the W. E. Highley millsite. The complaint as well as the statement of reasons lists the millsites as "W. E. Highley millsite claim a/k/a Beryl millsite claim." We find no merit in the suggestion that appellant may have been in doubt as to what millsite was being contested.

We conclude that appellant has shown no reason to disturb the Judge's decision.

Accordingly 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.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joan B. Thompson
Administrative Judge

