

UNITED STATES  
v.  
BEATRICE ANN JOHNSON

IBLA 77-496

Decided December 19, 1977

Appeal from a decision of Administrative Law Judge Robert W. Mesch declaring lode mining claims invalid as to the interest of appellant. Contest NM 296.

Affirmed.

1. Mining Claims: Discovery: Generally

A discovery of a valuable mineral deposit has been made where minerals have been found within the limits of a claim and the evidence is such that a person of ordinary prudence would be justified in the further expenditure of his labor and means in a reasonable prospect of success in developing a valuable mine.

2. Mining Claims: Discovery: Generally

Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit, i.e., a valuable mineral deposit has not been found simply because the facts might warrant a search for such a deposit.

3. Administrative Procedure: Burden of Proof -- Mining Claims:  
Contests -- Mining Claims: Discovery: Generally

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward

with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

4. Administrative Procedure: Hearings -- Mining Claims: Hearings

The Government has established a prima facie case when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

5. Mining Claims: Discovery: Generally

A Government mineral examiner in evaluating a mining claim is under no duty to undertake discovery work or to explore beyond the current workings of a claim and it is incumbent upon the mining claimant to keep discovery points available for inspection by a Government mineral examiner.

6. Mining Claims: Hearings -- Rules of Practice: Hearings

A second hearing will not be afforded where a claimant was given notice and an opportunity to appear at a hearing, where she actually was represented at the hearing, and where nothing has been submitted which suggests that another hearing would produce a different result.

APPEARANCES: Jim R. Hunter, Deming, New Mexico, for appellant; 1/ Gayle R. Manges, Esq., Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Government.

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1/ The appearance of Jim R. Hunter on behalf of his aunt, Beatrice Ann Johnson was allowed pursuant to 43 CFR 1.3(b)(3)(i).

## OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Beatrice Ann Johnson has appealed from a decision dated July 7, 1977, wherein Administrative Law Judge Mesch declared the Gem Nos. 1 through 8 lode mining claims invalid for lack of discovery of a valuable mineral deposit.

[1, 2, 3, 4, 5] The claims are situated within the area withdrawn by Executive Order No. 9029 of January 20, 1942, for the White Sands Missile Range, in secs. 5, 8, 9, T. 13 S., R. 4 E., N.M. P.M., Sierra County, New Mexico. The Judge's decision sets out in detail the evidence and application of the law, together with his findings and conclusions. We agree with his decision and adopt it as the decision of this Board. A copy is attached hereto.

Appellant does not question the decision of Judge Mesch on the hearing record, but asserts only that her case was not adequately presented at the hearing before Judge Mesch because of the inability, for reason of illness, of Albert Hunter, one of the original locators of the Gem group of claims, to appear and testify. For this reason, she requests another opportunity to present evidence. She has not suggested what evidence Mr. Hunter would give, nor how it might affect the conclusions of Judge Mesch.

Our review of the transcript of the hearing indicates that Albert Hunter was unable to be present and testify because of illness, but nothing was presented to suggest the evidence he might give would prompt the Judge to a different conclusion.

[6] A request for further hearing in a mining claim contest will be denied where the contestee fails to show any equitable basis for holding a further hearing, fails to make a tender of proof which would tend to establish a discovery of a valuable mineral deposit, and it appears that the request is simply for additional time to prospect and attempt to make a discovery of a valuable mineral deposit. United States v. Stevens, 77 I.D. 97 (1970); H. L. Bigler, 11 IBLA 297 (1973). A second hearing will not be afforded where a claimant was given notice and an opportunity to appear at a hearing, where she actually was represented at the hearing, and where nothing has been submitted which suggests that another hearing would produce a different result. United States v. Weigel, 26 IBLA 183 (1976). The request for a new hearing is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the Gem

Nos. 1 through 8 lode mining claims are declared null and void as to the remaining interest therein of Beatrice Ann Johnson.

Douglas E. Henriques  
Administrative Judge

We concur:

Martin Ritvo  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

July 7, 1977

UNITED STATES OF AMERICA, : NEW MEXICO 296

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Contestant : Involving the Gem Nos. 1  
: through 8, inclusive, lode  
v. : mining claims located in  
: Secs. 5, 8 and 9, T. 13 S.,  
BEATRICE ANN JOHNSON : R. 4 E., NMPM, Sierra  
: County (formerly Socorro  
Contestant : County), New Mexico.

DECISION

Appearances: Gayle E. Manges, Esq., Office of the Solicitor, Department of the Interior, Santa Fe, New Mexico, for contestant;

Jim R. Hunter, Deming, New Mexico, for contestee.

Before: Administrative Law Judge Mesch.

This is a proceeding involving the validity of eight lode mining claims located under the General Mining Laws of 1872, as amended, 30 U.S.C. § 22 et seq. Pursuant to 43 CFR 4.451, the New Mexico State Office, Bureau of Land Management, issued a complaint on April 11, 1974, charging that the subject mining claims are invalid because (1) they were not perfected by the discovery of a valuable mineral deposit at the time the lands were withdrawn from location on January 20, 1942, and (2) they are not presently supported by the discovery of a valuable mineral deposit.

The complaint named numerous parties as contestees. By a decision dated September 10, 1975, United States v. Hunter, 22 IBLA 28,

the Board of Land Appeals found that all contestees, except Beatrice Ann Johnson, had failed to file a timely answer to the complaint. The Board declared the interests in the claims of all nonanswering contestees null and void and concluded that a hearing was necessary to determine the validity of the claims as to the interests of Beatrice Ann Johnson. A hearing was held on March 30, 1977, at Las Cruces, New Mexico.

The mining claims are situated in the San Andreas Mountains in the White Sands Missile Range. They were located in the late 1930's. Beatrice Ann Johnson apparently has a one-eightieth interest in each of the claims as one of eight heirs of one of the original ten locators. The land covered by the claims was withdrawn from all forms of appropriation and reserved for the use of the War Department on January 20, 1942. The withdrawal is still in effect. The United States has had possession of the claims since the early 1940's by virtue of successive condemnation actions in which it acquired at various times what might be termed a leasehold interest.

The following principles of law are controlling and will be applied in determining the validity of the contested claims.

1. The unilateral act of locating a mining claim is only the initial step in seeking the benefits provided by the mining laws. A locator does not obtain any rights against the United States until all requirements of the law have been satisfied. One of these requirements is the actual physical finding of a valuable mineral deposit within the limits of the claim. United States v. Coleman, 390 U.S. 599 (1968); Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959).
2. A valuable mineral deposit is an occurrence of mineralization of such quantity and quality as to warrant a person of ordinary prudence in the expenditure of time and money in the development of a mine and the extraction of the mineral, i.e., the mineral deposit that has been found must have a present value for mining purposes. Chrisman v. Miller, 197 U.S. 313 (1905); United States v. Coleman, *supra*.
3. Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit, i.e., a valuable mineral deposit has not been found simply because the facts might warrant a search for such a deposit. Chrisman v. Miller, *supra*; Barton v. Morton, 498 F.2d 288 (9th Cir. 1974).

4. When land is closed to location under the mining laws subsequent to the location of a mining claim, the validity of the claim cannot be recognized unless the claim was supported by a valid discovery at the time of the withdrawal. A mining claimant has no rights to endeavor to make a discovery after a withdrawal and thus prevent the United States from devoting the land to other uses. Cameron v. United States, 252 U.S. 450 (1919); United States v. Gunsight Mining Company, 5 IBLA 62 (1972); United States v. Coston, A-30835 (February 23, 1968).

5. Even though a mining claim might have been perfected by the discovery of a valuable mineral deposit at the time of a withdrawal or at some other time in the past, it cannot be considered valid unless it is presently supported by a sufficient discovery. The current conditions must satisfy the requirements of the mining laws. The loss of the discovery, either through exhaustion of the minerals, changes in economic conditions, or other circumstances, results in the loss of the location. Best v. Humbolt Placer Mining Company, 371 U.S. 334 (1963); Mulkern v. Hammitt, 326 F.2d 896 (9th Cir. 1964); United States v. Gunsight Mining Company, supra.

6. When the Government contests the validity of a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case. The ultimate burden is on the mining claimant to show that the charges made by the Government are not true and the mining claim is valid, *i.e.*, that he has complied with the mining laws and has a superior right and title to the land over the United States. Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959); United States v. Springer, 491 F.2d 239 (9th Cir. 1974); United States v. Taylor, 19 IBLA 9, 82 I.D. 68 (1975).

7. In examining a mining claim a Government mineral examiner has no obligation to explore or sample beyond the mining claimant's workings, to rehabilitate the workings, or to perform sufficient work to reach a definite conclusion as to whether a valuable mineral deposit does or does not exist somewhere within the limits of a mining claim. If a valuable mineral deposit exists, it is incumbent upon the claimant to discover it. The function of the Government mineral examiner is simply to verify, if feasible, whether the claimant has, in fact, found a valuable mineral deposit. United States v. Ramsey, 14 IBLA 152 (1974); United States v. Woolsey, 13 IBLA 120 (1973).

John Goldenstein, a mineral examiner with the Bureau of Land Management, testified in behalf of the contestant. He has a

degree in geology and a degree in mining engineering. He worked as a geologist for various companies and the Atomic Energy Commission between 1950 and 1957. Since 1957 he has been examining and evaluating mining claims for the Bureau of Land Management. He examined the contested claims on two or more occasions in 1973. On one visit to the claims he was accompanied by representatives of the contestee. He examined all cuts, drifts, and trenches on the eight claims. He took eight samples from the best exposures of mineralization he could find in the workings on the claims. Mr. Goldenstein recognized that there was quite a bit of slump and fill in the workings. He did find, however, rock in place and sampled the best that was exposed at the time.

Based upon his education and experience, his examination of the lands, and the assay results from the samples he took, he expressed the opinion that as of the present time and as of January 20, 1942, a person of ordinary prudence would not be justified in spending time and money on the claims in an effort to develop a paying mine. He stated the quality of the mineralization was too low grade and there was an insufficient amount of mineralization.

I find that the Bureau of Land Management presented a prima facie case in support of the allegations in the complaint. The fact that Mr. Goldenstein did not rehabilitate the workings or explore beneath the fill and debris does not affect the Bureau's case. The mining claimant and not the Bureau has the obligation of rehabilitation or exploration. As stated in United States v. Woolsey, *supra*:

. . . In no case will the Government's mineral examiner be required to perform discovery work for the claimant, to explore beyond the claimant's exposed workings, or to rehabilitate discovery points for the claimant. (p. 123)

The contestee's representative, Mr. Hunter, presented two assay certificates issued in 1939 showing the assay results from six samples allegedly taken from the contested claims. These showed lead values ranging from a trace to 26.4 percent, gold values from a trace to 0.02 ounces, and silver values from a trace to 1.5 ounces per ton of material. He then presented a 1976 letter from ASARCO's Southwestern Ore Purchasing Department showing that, on the basis of the one high assay from one of the six samples, ASARCO would have paid a shipper \$ 18.01 per ton in 1941 and, if they were interested in purchasing the material, \$ 10.23 per ton in 1976. The letter concluded:

At this time we would not be purchasing a product with such a high insoluble content. (Ex. D)

Mr. Hunter also presented figures he had prepared showing that in 1941 the then mining claimants could have mined and transported ore from the claims to the mill at a total cost below \$ 18.01 per ton. He did not present any cost figures as of the present time.

I see no reason to question Mr. Hunter's cost figures or the probative value of the assay certificates which were received in evidence without any supporting foundation. The cost figures and assay results are not particularly meaningful without some evidence, which was not presented, showing the quantity of the material represented by the one high assay that might be available for extraction.

The mining claimant had the burden of proving that, as of the date of the withdrawal in 1942 and at the present time, mineralization had been found within the limits of each of the claims of such quality and quantity as to warrant a person of ordinary prudence in the expenditure of time and money in the development of a mine and the extraction of the mineral. In order to meet this burden the contestee had to present evidence relating to quantity, quality, and costs sufficient to support the conclusion that a prudent person would have been justified as of each crucial period of time in commencing a mining operation. The contestee did not satisfy her burden of proof. No one could conclude from the evidence presented by the contestee that a mineral deposit had been found as of either period of time that was valuable for mining purposes.

The contestee contends that she should be given the opportunity to clean out the workings on the claims in order to ascertain whether the claims are or are not valuable for mining. The short answer to this contention is that the contestee had adequate time between the filing of the contest complaint in 1974 and the hearing in 1977 to perform this work. She could have attempted to obtain permission to do such work from the Government agency controlling the land and if she was unsuccessful she could have sought appropriate relief from the Federal District Court handling the condemnations or from this office.

The contested mining claims are declared invalid as to the interests of Beatrice Ann Johnson.

Robert W. Mesch  
Administrative Law Judge

