

UNITED STATES
v.
DORIS CONGER CALDWELL

IBLA 77-581

Decided December 19, 1977

Appeal from decision of Administrative Law Judge E. Kendall Clarke declaring the Seattle Bar placer mining claim null and void. OR-15075

Affirmed.

1. Mining Claims: Discovery: Marketability

A prima facie case has been established when a Government mineral examiner testifies that he has examined the mining claim and found the evidence of mineralization insufficient to support a finding of discovery of a valuable mineral deposit. The fact that there may be a market for limestone from the mining claim at some future date under altered economic conditions is not sufficient to meet the marketability test of discovery.

2. Federal Employees and Officers: Generally -- Mining Claims:
Discovery: Generally

A Government mineral examiner, versed in mining engineering and/or geology is qualified to evaluate a mining claim for a particular mineral even though he does not possess specific experience as to that mineral.

APPEARANCES: Herb Lombard, Esq., Sahlstrom and Lombard, Eugene, Oregon, for Appellant; Elden M. Gish, Esq., Office of the General Counsel, U.S. Department of Agriculture, Portland, Oregon, for the Government.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Doris Conger Caldwell has appealed from a decision of Administrative Law Judge E. Kendall Clarke, dated September 1, 1977, declaring the Seattle Bar placer mining claim null and void. The mining claim is situated in the NW 1/4 SW 1/4, NW 1/4 SW 1/4 SW 1/4, Section 11, T. 41 S., R. 4 W., Willamette Meridian, Jackson County, Oregon, within the Rogue River National Forest.

Contest complaint OR-15075 was issued on February 25, 1976, by the Bureau of Land Management on behalf of the Forest Service. The complaint charged, *inter alia*, that there were not sufficient quantities of minerals present within the limits of the claim to constitute a discovery of a valuable mineral deposit within the meaning of the mining law.

[1] We have reviewed the record in this case and the arguments advanced by the parties. We are in agreement with the summary of testimony, the summary of applicable law, and the conclusion reached by Judge Clarke. Therefore, we adopt Judge Clarke's opinion in its entirety 1/ as the opinion of the Board and we attach a copy hereto.

[2] On appeal, Appellant sets out no new legal or factual arguments. She merely alleges that Judge Clarke failed properly to evaluate the evidence and that the Forest Service witness, Colver Anderson, was not sufficiently qualified to evaluate the claim since he "lacked qualifications or experience in the limestone operations." We hold that a Government mineral examiner, versed in mining engineering and/or geology is qualified to evaluate a mining claim for a particular mineral even though he does not possess specific experience as to that mineral. United States v. A. O. Bartell, 31 IBLA 47, 50 (1977). Cf. Cabot Sedgwick v. O. M. Parker, 27 IBLA 256 (1976).

The record is clear that Mr. Anderson was qualified to examine and evaluate the claim and that his testimony constituted a prima facie case of lack of discovery of a valuable mineral deposit. United States v. John M. Tappan, 25 IBLA 1 (1976); United States v. Robert L. Taylor, 25 IBLA 21 (1976). The Judge's conclusion that Appellant failed to overcome the prima facie case is supported by the record. Appellant's contentions are without merit.

1/ The ultimate citation in Judge Clarke's decision is properly designated Ideal Basic Industries, Inc. v. Morton, 542 F.2d 1364 (9th Cir. 1976).

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.

Frederick Fishman
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Douglas E. Henriques
Administrative Judge

September 1, 1977

United States of America, Contest No. OR-15075
Seattle Bar Placer) Involving the Seattle Bar (aka
in the NW-1/4 SW-1/4 and Placer Mining Claim, situated
11, T. 41 S., R. 4 W., Willa NW-1/4 SW-1/4 SW-1/4 of Sec.
County, Oregon -mette Meridian, Jackson
Contestant
v. Mrs. Doris
Conger Caldwell (aka Mrs. William E. Caldwell),
Contestee

DECISION

Appearances: Elden M. Gish, Attorney, Office of the
General Counsel, U.S. Department of
Agriculture, Portland, Oregon, for the
Contestant;

Herb Lombard, Sahlstrom and Lombard,
Attorneys at Law, Eugene, Oregon for
the Contestee.

Before: Administrative Law Judge Clarke.

This proceeding was initiated by the Bureau of Land Management on behalf of the United States Forest Service through the filing of a Complaint on February 25, 1976. The Complaint alleges in paragraph five as follows:

"a. Minerals have not been found within the limits of the claim in sufficient quantities to constitute a valid discovery.

b. The material found within the limits of the claim is not a valuable mineral deposit under Section 3 of the Act of July 23, 1955 (69 Stat. 367; 30 U.S.C. 601, et seq.).

c. The land within the claim[s,] in nonmineral in character."

On March 18, 1976, a timely Answer was filed. By Notice of Hearing issued July 26, 1976, the matter was set for hearing on November 10, 1976, in Medford, Oregon, and held as scheduled.

SUMMARY OF TESTIMONY

The claim which is the subject of this proceeding involves 40 acres and was located in 1954 by Dr. and Mrs. Caldwell for limestone. (Tr. 7.) This claim is approximately 34 miles from Medford, Oregon, just north of the California border. (Tr. 8, Exhibit 1). The claim was examined for the Contestant by Mr. Colver Anderson, a mining engineer for the United States Forest Service. Subsequent to his examination, Mr. Anderson retired and was at the time of the hearing re-employed for the purpose of testifying. Mr. Anderson is a well-qualified mining engineer having received a Bachelor of Science degree from Oregon State College in 1934 and then accomplishing graduate work in geology and mining engineering. Since his graduation from college in 1934, he has been nearly continuously employed in the field of mining engineering both in the private sector and since 1956 for the United States Forest Service. (Tr. 4-6).

Mr. Anderson examined this claim in 1960, 1961, 1962, one day in 1975, and just prior to the hearing spent one or two hours on the claim. (Tr. 6). He described the topography as being rather steep hillsides with a fairly wide valley. "The hill on which the claims specifically are located is a very steep hillside. The limestone is part of what's known as the Applegate Formation and represents former sedimentary bedding which has been twisted and turned and pushed and pulled -- and put through the mountain building processes, . . ." (Tr. 9). He testified that it is his belief the limestone would test very high in purity, although it is interbedded with schists and shales so that taking a sample across the strike would result in a less pure sample because of the inclusions of other rock types. This is true even though one could select pure pieces of limestone of very high quality. (Tr. 19).

Mr. Anderson testified that he accepted Dr. Caldwell's statement as to the purity of the limestone and also his estimate of the quantity which was in the neighborhood of two million yards. (Tr. 30). He did, however, believe that this was not a large deposit for a cement operation. (Tr. 19). He testified that there are other limestone deposits in the area closer to rail transportation than the claim involved in this proceeding and that even those deposits are not being used. The principal use of limestone is in the Portland, Oregon area where it is brought from Vancouver, B.C. by barge. In 1969 this limestone was delivered at Lake Oswego for \$ 3.92 per ton.

It was Mr. Anderson's testimony that there was not one limestone deposit in the state of Oregon which was in use at the time of the hearing for the reason that there was no area which could ship to Portland in sufficient volume to meet the needs or meet the expenses of competing with the other lime which comes to Portland by barge from British Columbia and the Alaskan coast. (Tr. 20). From his personal knowledge Mr. Anderson testified that there was no market available for the material from the claim. (Tr. 18).

Mrs. Caldwell testified concerning what she and her husband had done on the Seattle Bar claim. She introduced Exhibit C which is a history which she compiled of actions which had taken place concerning that claim and the material which had been sold in small quantities to various users. Although Mrs. Caldwell believed that there was a discovery of a valuable mineral sufficient to meet the requirements of the United States mining law, it was her opinion that before the claim could be operated, it would be necessary to develop a market for the material in so far as finding people that would purchase the limestone.

SUMMARY OF APPLICABLE LAW

In this proceeding, the Contestant is required to produce sufficient evidence to establish a prima facie case in support of its contention that a discovery does not exist on the contested claim. Thereafter, the Claimant must show by a preponderance of the evidence that the claim is valid. Foster v. Seaton, 271 F. 2d 836 (D.C., C.A., 1959); United States v. Springer, 491 F. 2d 239, 242, (9th Cir. 1974), cert. denied, 95 S.Ct. 60 (1974).

The Act under which these mining claims were located (30 U.S.C., 22 et seq., May 10, 1872) requires for a valid claim the discovery of a valuable mineral deposit.

It has been held in a long list of cases beginning in 1894 that a discovery of a valuable mineral exists 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 profitable mine" Castle v. Womble, 19 L.D. 455, 457 (1894).

In the United States Supreme Court case of Chrisman v. Miller, 197 U.S. 313 (1905), the Court approved the earlier definition by the Department, Castle v. Womble, supra, that a mineral found on a claim

such as gold or silver must exist in quantities sufficient to justify the expenditure of money for the development of the claim and extraction of the mineral. (See also Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963)).

The Supreme Court has further held that it is the intent of the mining laws to reward the discovery of minerals which are valuable in an economic sense and that the minerals which would not be extracted by a prudent man because there is no demand for them for a price higher than the extraction and transportation costs are not economically valuable. United States v. Coleman, 390 U.S. 599 (1968).

A prima facie case has been made when a Government mineral examiner testifies that he has examined the claim and found the evidence of mineralization insufficient to support a finding of a discovery. United States v. Shield, 17 IBLA 91 (1974); United States v. Ramsher Mining and Engineering Co., Inc., 13 IBLA 268 (1973); United States v. Woolsey, 13 IBLA 120 (1973); United States v. Gould, A-30990 (May 7, 1969).

The test of marketability is not satisfied by the existence of a possible market for the mineral at some future date under altered economic conditions. Ideal Cement Company v. Morton, 542 Fed. 1364.

DISCUSSION AND CONCLUSION

The United States Forest Service, the contestant herein, has demonstrated a prima facie case in that the expert witness who examined the claim and studied the market conditions was of the opinion that the material from the claim could not be marketed. The testimony from the Contestee did not overcome this prima facie case for even though Mrs. Caldwell, the wife and co-locator of the claim, believed it to be valuable, she could not demonstrate that there was in fact a ready market available or that the material could be marketed at a profit. Since the Contestee has failed to preponderate against the prima facie case established by the Contestant, it is necessary for me to hold that the Seattle Bar placer mining claim is null and void for lack of discovery of a valuable mineral deposit which satisfies the requirements of the United States mining law. The Seattle Bar placer mining claim is hereby declared null and void.

E. Kendall Clarke
Administrative Law Judge

