

UNITED STATES
v.
BONDA NIECE AND LESLIE NIECE

IBLA 77-564

Decided January 10, 1978

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring five lode mining claims null and void. I 9727.

Affirmed.

1. Contests and Protests: Generally -- Evidence: Presumptions -- Rules of Practice: Government Contests

In a government contest, regular service of the complaint must be presumed, where no question is raised as to the validity of certified mail return receipts included in the record, regular on their face and indicating proper service.

2. Mining Claims: Contests -- Mining Claims: Determination of Validity

Where a contest complaint charges that no minerals of a variety subject to the mining laws sufficient in quality, quantity, and value to constitute a discovery are disclosed on a claim, and that the land embraced in the claim is nonmineral in character and the contestee fails to file an answer to the complaint in accordance with departmental regulations, the allegation of the complaint will be taken as admitted by the contestee and the claim is properly held null and void.

APPEARANCES: Bonda Niece, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Bonda Niece ^{1/} appeals from a decision of the Idaho State [**2] Office, Bureau of Land Management (BLM), dated August 25, 1977, declaring five lode mining claims null and void. Mountain Park and Mountain View Nos. 1 - 3 are located in sec. 25, T. 11 N., R. 12 E., Boise meridian, Custer County, Idaho; Mountain View No. 4 is located in sec. 30, T. 11 N., R. 13 E., Boise meridian, Custer County, Idaho. All of the claims lie within the Stanley Mining District, Challis National Forest.

The Government initiated a contest challenging the validity of Appellant's claims with a complaint charging:

(1) There are not presently disclosed, nor were there disclosed as of August 22, 1972, within the boundaries of the mining claims, materials in place of a variety subject to the mining laws, sufficient in quality, quantity, and value to constitute a discovery.

(2) The land embraced within the claim is nonmineral in character.

Service of the complaint on Appellant is evidenced in the record by certified mail return receipts Nos. 36675 and 36676, which bear the signature "Bonda Niece" and the date "7-5-77."

On August 25, 1977, BLM, failing to receive an answer from Appellant, held the charges in the complaint as admitted and declared the mining claims null and void without a hearing.

Appellant's notice of appeal filed September 6, 1977, contains the following statement of reasons: "Bonda Niece * * * has no knowledge of receipt of the complaints on July 5, 1977."

The record indicates that BLM then sent copies of the complaint and the certified mail return receipts to Appellant, but that Appellant did not respond.

43 CFR 4.450-6 requires that in a contest, the contestee must file in the office where the contest is pending an answer specifically meeting and responding to the allegations of the complaint within 30 days after service of the complaint. If a sufficient answer is not timely filed, the allegations of the complaint are taken as admitted and a decision rendered without a hearing, 43 CFR 4.450-7(a).

^{1/} The record indicates that Leslie Niece died prior to the appeal.

[1] In the present case, Appellant did not file a timely answer to the Government's complaint. Although Appellant denies knowledge of service of the complaint, the record shows that service was properly made by certified mail, return receipt requested, as provided in 43 CFR 4.422(c)(1). In the absence of evidence questioning the validity of the receipts included in the record, we must presume that service was regular, *cf.* Arjay Oil Co., 33 IBLA 102 (1977).

[2] As the allegations of the complaints taken as admitted constitute sufficient grounds for declaring a mining claim null and void, BLM properly rendered that decision in the present case, 43 CFR 3812.1. United States v. Honeycutt, 15 IBLA 184 (1974).

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.

Martin Ritvo
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Douglas E. Henriques
Administrative Judge

