

UNITED STATES
v.
BRENT J. BRUNKER

IBLA 78-19

Decided June 27, 1978

Appeal from decision of the Idaho State Office, Bureau of Land Management, declaring mining claims and millsite null and void. Contest No. I-9724.

Affirmed.

1. Contests and Protests: Generally -- Mining Claims: Contests -- Rules of Practice: Government Contests

Failure to file a timely answer to a mining claim contest complaint will result in the charges in the complaint being taken as admitted and the case being decided without a hearing. Unsubstantiated allegations of temporary incapacity due to a nervous breakdown cannot serve as a basis for waiving this mandatory requirement.

APPEARANCES: E. Lee Schlender, Esq., Ketchum, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Brent J. Bruncker appeals from the August 25, 1977, decision of the Idaho State Office, Bureau of Land Management (BLM), declaring the Rain Bow No. 1, Rain Bow No. 2, Rain Bow No. 3, and Rain Bow No. 4 lode mining claims and the Rain Bow Millsite No. 1 null and void. (Contest No. I-9724.) The State Office rendered this decision by taking as admitted the charges in the contest complaint after appellant failed to file a timely answer to the complaint.

The contest complaint, dated June 28, 1977, charges, among other things, that no discovery of a valuable mineral deposit has been made within the boundaries of the mining claims and that the millsite is not being used or occupied for mining or milling purposes and has no quartz mill or reduction works thereon. Copies of the complaint were sent by certified mail to appellant and his wife. The return receipt cards show that appellant was served with the complaint on July 14, 1977, and his wife on June 30, 1977. On

August 17, 1977, the BLM State Office received an inquiry from appellant, postmarked August 16, 1977, to explain the procedure necessary to answer the complaint. Appellant claimed he could not understand the "Government double talk" enclosed with his complaint. The State Office received nothing from Mrs. Brunker.

In his statement of reasons, appellant states that he and his wife were divorced on April 22, 1977. He alleges that thereafter he suffered a nervous breakdown, was totally incapacitated, and was unable to conduct his normal affairs. He states he was under a psychiatrist's care. Appellant argues that he is exempt from default by reason of incompetency. We requested proof of his medical and legal capacity as of the time the answer was due, but have received none.

[1] Regulation 43 CFR 4.450-6 requires a contestee to file his answer to a contest complaint within 30 days after service of the complaint. In order to comply with this requirement, appellant's answer was due by August 14, 1977. The effect of failure to file an answer timely, applied to Government contests by 43 CFR 4.451-2, is stated in 43 CFR 4.450-7(a):

If an answer is not filed as required, the allegations of the complaint will be taken as admitted by the contestee and the Manager will decide the case without a hearing.

This provision is also contained in the contest complaint.

The above regulation is considered mandatory. Sainberg v. Morton, 363 F. Supp. 1259, 1262-63 (D. Ariz. 1973); United States v. Ragsdale, 20 IBLA 348 (1975); United States v. Weiss, 15 IBLA 198 (1974); cf. United States v. Smith, 29 IBLA 10 (1977) (the 10-day grace period for timely filing if transmitted within the requisite period, 43 CFR 4.422(a), applies to contest complaint answers). Mere allegations of failure to file timely because of illness do not constitute grounds to waive the mandatory answer requirement. United States v. Storer, 3 IBLA 151 (1971); United States v. Gilligan, A-28857 (1962).

Appellant's allegations are unsupported by evidence. He does not explain how he was able to file the request for information a few days after the answer was due if he was incapacitated as alleged. By failing to answer the contest complaint timely, appellant left BLM no recourse but to invoke 43 CFR 4.450-7(a). Taking the charges in the complaint as admitted, the BLM State Office properly declared appellant's mining claims and millsite null and void.

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.

Joan B. Thompson
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Frederick Fishman
Administrative Judge

