

UNITED STATES
v.
WESLEY C. MILES, SR.

IBLA 78-210

Decided August 3, 1978

Appeal from decision of Administrative Law Judge Robert W. Mesch declaring the Junior Chief and Betty G placer mining claims null and void. Contest CO-595.

Affirmed.

1. Mining Claims: Contests

Where a contestee in a mining claim contest declares, of his own volition, that he does not want the claim and wishes to withdraw his answer and admit the allegations in the contest complaint, and subsequently volunteers to, and does, sign a written relinquishment of his interests in the contested claims, his claims are properly declared null and void.

2. Mining Claims: Discovery: Generally

A discovery of a valuable mineral deposit is not made unless minerals have been found on a claim, 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 valuable mine, and the deposit may be perceived by a prudent man as susceptible to extraction, removal and marketing at a reasonable profit.

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

When the Government contests a mining claim on a charge of no discovery, it bears the

burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

4. Administrative Procedure: Burden of Proof -- Mining Claims: Contests

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Government mineral examiners are not required to perform discovery work for claimants or to explore beyond a claimant's workings.

APPEARANCES: Jack E. Hanthorn, Esq., Regional Attorney, Office of the General Counsel, Department of Agriculture, Denver, Colorado, for appellee; Wesley C. Miles, Sr., pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Wesley C. Miles, Sr. (appellant), appeals from a decision of Administrative Law Judge Robert W. Mesch, dated December 30, 1977, declaring the Junior Chief and Betty G 1/ placer mining claims null and void. We affirm.

On June 17, 1975, the Bureau of Land Management (BLM), on behalf of the Forest Service, initiated contest number CO-595. The contest

1/ Additionally, the contest complaint deals with the Gold Dust and the Big Chief placer claims, as well as the Gold Dust and Big Chief millsites. On December 13, 1976, BLM declared all of these placer claims and millsites null and void as to all contestees other than Wesley C. Miles, Sr. None of the contestees appealed from this decision, so it is now final. Moreover, Miles admitted at the hearing that he never had an interest in any claims other than the Junior Chief and Betty G placer claims (Tr. 5). The administrative law judge concluded that the December 13, 1976, decision by BLM declared these other claims null and void in toto. Miles has not appealed this conclusion. Accordingly, in its present status, the dispute concerns only Miles and the Junior Chief and Betty G placer claims. The remaining contestees' interests in all the subject claims, and Miles' supposed interests in the Gold Dust and Big Chief placer claims and millsites have been finally adjudicated as invalid and are not before us.

complaint charged, inter alia, that the Junior Chief and Betty G placer mining claims are not valid because no valuable mineral deposit has been discovered within the limits of the claims, and because the ground covered by the claims is nonmineral in character.

On March 12, 1976, Wesley C. Miles, Sr., filed an answer to this complaint in which he noted that the Betty G placer claim had not been worked sufficiently since 1973, and that no work has been performed or buildings erected in lieu thereof on the Betty G since 1973. As to the Junior Chief claim, however, Miles asserted that he had resided there and worked it steadily since 1968, and that he had made a valuable discovery of gold and silver there. Accordingly, the matter was set for hearing and was heard on May 24, 1977, in Alamosa, Colorado, before Administrative Law Judge Mesch.

[1] At the close of the hearing in this matter, appellant stated that he did not want the claim, that he wished to withdraw his answer to the contest complaint, that the allegations in this contest complaint could be considered to have been admitted, and that the Junior Chief and Betty G placer mining claims could be considered null and void (Tr. 47-49). At the same time, the Government indicated that it would forbear taking any further actions against the claim until after November 1, 1977, in order to allow appellant to remove his improvements on the claims (Tr. 48). On May 24, 1977, appellant signed a relinquishment, effective November 1, 1977, of all right, title, and interest in these claims which he might have acquired under the mining laws.

The administrative law judge's decision noted the foregoing and concluded that the Junior Chief and Betty G placer mining claims were invalid. Appellant now argues before this Board that this decision should be reversed, because

[d]ue to a combination of constant harassment by the Forest Service, and repeated, serious thefts and vandalisms of appellant's personal properties thereon, that appellant was so discouraged and disgusted on said May 24, 1977, that he just could not properly present any facet of his case to [the administrative law judge].

Moreover, he argues, the decision should be reversed because it was the result of a 9-year conspiracy against him and was also "a tort" against him.

Appellant apparently means to imply that he did not freely admit the invalidity of these claims. The record indicates otherwise. Appellant, on his own volition, and completely unexpectedly, instigated the actions by which he relinquished these claims. During the course of his presentation at the hearing, he abruptly stated as

follows: "It will take a while to get the concentrate and the buildings and stuff off there. Then I don't care what happens. You can have it" (Tr. 46-47). He also stated that "[c]ome along November, you can have it. I don't want it" (Tr. 47). Moreover, appellant stated voluntarily that he would "make that a written promise" (Tr. 47). In view of these statements, and in view of the fact that appellant did sign a written relinquishment, it is clear that he knowingly and willingly agreed that he would relinquish whatever interest he had in them. Accordingly, the administrative law judge's decision is affirmed.

In any event, the record indicates that, even absent appellant's admission that the claims were invalid, they properly would have been declared null and void. As to the Betty G claim, the Government presented the testimony of Mineral Examiner Warren C. Roberts that he visited the claim in July 1972. Appellant was present and directed him as to where the best values were to be found on the claim (Tr. 19-20). Roberts took a sample there, but inspection and assay revealed only a valueless trace of gold (Exh. D; Tr. 20-21). Roberts testified that, in his opinion, it would be a "worthless endeavor to try and find gold in these gravels" (Tr. 22-23), and that "[t]here is no chance of coming up with a profitable operation" (Tr. 23). Appellant made no effort to rebut this showing. In fact, he had admitted in his answer to the contest complaint that the Betty G claim was invalid.

As to the Junior Chief claim, Roberts testified that he visited it on eight occasions since 1969 (Tr. 8). Appellant was present on two or three of these visits (Tr. 8). In September 1970, appellant suggested where Roberts should take samples in order to show the value of the claim (Tr. 11). Roberts took two samples there (Tr. 14). These samples were inspected and assayed, but there was only an insignificant amount of gold of no value present in them (Exhs. B and C; Tr. 12-15). Roberts testified, based on his experience as a mineral examiner and geologist and on his examination of the Junior Chief mining claim, that, in his opinion, attempting to develop a paying mine there would be "a fruitless task, as there is not enough gold present to allow for any profit" (Tr. 17-18). In response to this evidence, appellant presented a copy of an assay report dated October 22, 1968 (Exh. 1; Tr. 26). No definite evidence was presented to show where the material assayed was taken from, or how much the sample had been concentrated.

[2] Under the mining laws of the United States (30 U.S.C. § 22 *et seq.* (1970)), a valid location of a placer mining claim requires discovery of a valuable mineral deposit within the limits of the claim. The Department of the Interior defined the phrase "discovery of a valuable mineral deposit" in an early case, Castle v. Womble, 19 L.D. 455, 457 (1894):

[W]here 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 valuable mine, the requirements of the statute have been met.

That definition, known as the "prudent man test," has received the continuing approval of the Supreme Court. Chrisman v. Miller, 197 U.S. 313, 322 (1905); Cameron v. United States, 252 U.S. 450, 459 (1920); Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963).

Over the years since the promulgation of the prudent man test the Department has refined the law of discovery to include what has become known as the "marketability test," that is, the mineral deposit must be perceived by a prudent man as one that is susceptible to extraction, removal and marketing at a reasonable profit. The Supreme Court characterized the marketability requirement as a "logical complement" to the prudent man test. United States v. Coleman, 390 U.S. 599, 603 (1968). While the Department does not require a "sure thing," United States v. Kosanke, 3 IBLA 189, 217, 78 I.D. 285, 298 (1971), vacated on other grounds, 12 IBLA 282, 80 I.D. 538 (1973), the nucleus of value which sustains a discovery must be such that with actual mining operations under prudent management a profitable venture may reasonably be expected to result. Converse v. Udall, 399 F.2d 616, 623 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969).

[3, 4] When the Government contests a mining claim on a charge of no discovery, it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made. Foster v. Seaton, 271 F.2d 836, 838 (D.C. Cir. 1959); United States v. Springer, 491 F.2d 239, 242 (9th Cir.), cert. denied, 419 U.S. 834 (1974); United States v. Zweifel, 508 F.2d 1150 (10th Cir. 1975), cert. denied, 423 U.S. 829 (1976). The Government has established a prima facie case when a mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery. United States v. Bechthold, 25 IBLA 77 (1976); United States v. Blomquist, 7 IBLA 351 (1972). It is true that the mineral examiner's conclusion must be based on reliable, probative evidence. United States v. Winters, 2 IBLA 329, 335, 78 I.D. 193, 195 (1971). But Government mineral examiners are not required to perform discovery work, to explore or sample beyond a claimant's workings, or to conduct drilling programs for the benefit of a claimant. Henault Mining Co. v. Tysk, 419 F.2d 766 (9th Cir. 1969), cert. denied, 398 U.S. 950 (1970); United States v. Grigg, 8 IBLA 331, 343, 79 I.D. 682, 688 (1972).

The record clearly shows that the Government established its prima facie case. Geologist Roberts testified that he found no valuable minerals on either claim and that development of the claims

would be "fruitless" and a "worthless endeavor," owing to the small chance of running the operation at a profit. Appellant did not meet his burden of showing by a preponderance of evidence that a valuable discovery was made. The assay report which he presented was made in 1968. The claimant has the burden of showing, not only that a discovery was made, but that it still exists. United States v. Leslie Harding, 32 IBLA 29 (1977). No evidence of recent mineral discovery was presented. Moreover, the assay report which appellant submitted was not adequately tied to the claim in question, and appellant did not clearly show how concentrated the sample which he submitted for assay was. We find that, independent of appellant's admission of the invalidity of these claims and his relinquishment thereof, the record shows conclusively that the claims were invalid because the prima facie evidence that there was no discovery of a valuable mineral deposit there was not rebutted by a preponderance of evidence adduced by the contestee.

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.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Frederick Fishman
Administrative Judge

