

UNITED STATES
v.
LARRY JOSEPH TIMM

IBLA 78-314

Decided August 23, 1978

Appeal from decision of Administrative Law Judge Michael L. Morehouse, dated February 8, 1978, declaring placer mining claims null and void. Oregon 14986.

Affirmed.

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

In a mining claim contest, no weight will be given to claimant's allegation that the Government's mineral examiner failed to sample the discovery point or the best mineral showings, where the claimant was invited to indicate his discovery to the examiner and failed to do so, and where he also failed to introduce convincing evidence of his own that a discovery had been made.

2. 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.

APPEARANCES: Harold Banta, Esq., of Baker, Oregon, for contestant; Jim Kauble, Esq., U.S. Department of Agriculture, Office of General Counsel, Portland, Oregon, for contestee.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Larry Joseph Timm has appealed from a decision by Administrative Law Judge Michael L. Morehouse, dated February 8, 1978, which declared the No Name and the Tobias placer mining claims invalid for lack of discovery of a valuable mineral deposit.

[1] The claims are situated within the Wallowa-Whitman National Forest in sec. 22, T. 10 S., R. 35-1/2 E., Willamette meridian, Baker County, Oregon. The Judge's decision sets out in detail the evidence and applicable law and his findings and conclusions. We are in agreement with his decision, copy attached, and, therefore, adopt it as the decision of this Board.

On appeal, Mr. Timm does not object to the law as set out by the Judge as to the Government's burden of presenting a prima facie case or establishing that case by the testimony of a Government mineral examiner who testifies that mineral values are insufficient on the claim to establish a discovery. Instead, he maintains these rules are not applicable to his situation because the Government mineral examiner did not sample or inspect the exposures on which he actually relied for discovery.

Appellant focuses on the alleged confusion that developed as to the exact location of his most recent discovery points. He indicates the Government mineral examiner, Roger Minnich, examined an area where he has always freely admitted he had not made a discovery. He stresses that the area along the river where he did his 1976 work and recovered high values was plainly visible and still open for inspection and sampling when the claim was reexamined just prior to the hearing. He contends he would have pointed this area out to Minnich had he been given advance notice of the inspection so that he could have met the examiner at the claim to show him the exposures.

We find this line of argument insufficient to overcome the conclusions reached by the Judge. If there was any confusion as to the proper discovery points to be examined, appellant was in the best position to correct that situation. Appellant had ample opportunity to communicate with the Government examiner prior to the date of hearing to arrange for an examination and to specifically direct the examiner to the most advantageous points for sampling. He was already put on notice from the earlier mineral examination in June of 1975 that the test pit from the upper area of workings was the area where samples had been panned (Tr. 23, 35). Moreover, he was specifically told that the claim would be contested because it had a cabin on it and that if at any time before the hearing was set he felt he had a discovery, he could call Minnich and Minnich would come out and sample any area (Tr. 23). Appellant never requested a reexamination of the

claim and therefore cannot now complain the Government has examined the wrong area. Since appellant chose not to initiate further inspections of the claim, he bears the consequences for his failure to act.

In any event, Minnich testified that just prior to the hearing, he again visited the claim and observed the other area of appellant's workings, *i.e.*, another pit possibly worked within the last year. He testified that he did not take any samples because he felt there was nothing on the claim that looked favorable for sampling (Tr. 24). He subsequently concluded from his examinations of these claims that it was his opinion there had been no discovery.

[2] Under the circumstances, the Government mineral examiner did all that was necessary to properly inspect and evaluate appellant's claims. We again must emphasize that 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 786 (9th Cir. 1969), *cert. denied*, 398 U.S. 950 (1970); United States v. Reynders, 26 IBLA 131 (1976); United States v. Griggs, 8 IBLA 331, 343, 79 I.D. 682, 688 (1972). Further, it is incumbent upon the mining claimant to keep discovery points available for inspection by mineral examiners. United States v. Dietemann, 26 IBLA 356 (1976); United States v. Blomquist, 7 IBLA 351 (1972); United States v. Houston, 66 I.D. 161 (1959). Appellant has provided no substantial evidence of high mineral values on any area of these claims to overcome the Government's case.

Appellant takes issue with the Judge's interpretation of the evidence on which he found high labor costs and a low yield of gold of \$7 per yard to be hardly a profitable operation. Appellant contends the Judge erroneously reached his conclusion based on appellant's use of placer sampling and testing methods rather than a production-type operation. He indicates that when much larger equipment is used in a commercial operation, the claims would then clearly be operated at a profit in light of the rising value of gold. The evidence of record does not establish this contention. It must be assumed that if appellant could have introduced evidence to show the claim could have been operated at a profit with a higher volume operation, and the increased value of gold, he would have made an effort to substantiate this claim at the hearing. Again, the Judge correctly termed this type of inference as mere speculation and properly concluded there was no valuable discovery.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Administrative Law Judge is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

February 8, 1978

UNITED STATES OF AMERICA,	:	OREGON 14986
	:	
Contestant	:	Involving the No Name and
	:	Tobias placer mining claims
v.	:	situated in Sec. 22, T. 10 S.,
	:	R. 35 1/2 E., Willamette
LARRY JOSEPH TIMM,	:	Meridian (within the Wallowa!
	:	Whitman National Forest),
Contestee	:	Baker County, Oregon

DECISION

Appearances: James Kauble, Esq., Office of the Regional
Counsel, Department of Agriculture, Portland,
Oregon, for contestant;

Harold Banta, Esq., Baker, Oregon, for contestee.

Before: Administrative Law Judge Morehouse

This is a proceeding involving the validity of two mining claims located under the General Mining Laws of 1872, as amended, 30 U.S.C. § 22 et seq. The proceeding was initiated by the Oregon State Office, Bureau of Land Management, Department of the Interior, at the request of the Forest Service, Department of Agriculture.

Pursuant to 43 CFR 4.451, the Bureau of Land Management issued a complaint charging that the above claims were invalid because:

- a. The claim is not of legal dimensions, nor is it tied to a natural object or a surveyed corner.
- b. Minerals have not been found within the limits of the claim in sufficient quantities to constitute a valid discovery.
- c. The land within the claim is nonmineral in character.

Contestee timely answered and hearing was held at Baker, Oregon, on June 23, 1977. Briefs have been submitted by the parties.

The Department of the Interior and the courts have consistently held that (1) a mining claim cannot be recognized as valid unless a valuable mineral deposit has been found within the limits of the claims, (2) a valuable mineral deposit is an occurrence of mineralization 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, and (3) the test of whether a valuable mineral deposit has been found is whether the facts warrant the development or mining of the property and not whether the facts warrant prospecting or exploration in an attempt to ascertain whether the property should be developed. Chrisman v. Miller, 197 U.S. 313 (1905); United States v. Coleman, 390 U.S. 599 (1968); Henault Mining Company v. Tysk, 419 F.2d 766 (9th Cir. 1969); Barton v. Morton, 498 F.2d 288 (9th Cir. 1974); United States v. Winegar, 16 IBLA 112, 81 I.D. 380 (1974).

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 by a preponderance of the evidence that the claims are valid. A prima facie case is made where a Government mineral examiner testifies that he has examined the exposed workings on a claim and has found no mineralization sufficient to support the finding of a discovery of a valuable mineral deposit. The Government's mineral examiner is not required to perform discovery work for the claimant, to explore beyond the claimant's exposed workings, or to rehabilitate discovery points for the claimant. Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959); United States v. Woolsey, 13 IBLA 120 (1973); United States v. Taylor, 19 IBLA 9, 82 I.D. 68 (1975).

Mr. Roger Minnich, geologist and minerals examiner for the Forest Service, testified that he searched through the old records and had difficulty in locating the claims on the ground. The present contestee filed a meets and bounds location in April 1975 and then an amended location by legal subdivision in December 1976. When these two locations are plotted on a map (Exhibit G-4), they do not coincide. In any event, it was agreed by the parties that the rectangle outlined in red on Government's Exhibit G-4 is the proper area of the claims.

Mr. Minnich first was on the claims in June 1975 with another Forest Service mining engineer at which time he was shown a pit by contestee but was told by contestee that he did not have a discovery. At that time he asked contestee to advise him if a discovery was made and he (Minnich) would come out and take a sample. He never received a call that contestee had perfected a discovery. Mr. Minnich stated he was on the claims again just prior to the hearing date and observed the original pit and another pit that had been dug in the bottom of a dozer trench. He felt that the second pit was at least a year old and there was nothing that looked favorable for sampling. He stated there were extensive tailing piles on the claim (Exhibits G-6 and G-7) indicating that at one time there had been extensive hydraulic mining on the claim. It was his opinion that most of the gold present had been mined, that there had been no discovery on the claims and that a prudent person would not be justified in further expending his time or money in trying to develop a valuable mine.

Mr. Timm testified that he acquired the claims in June 1974 and that summer dug two test holes. He panned gravel as he went along and there was some color in almost every pan but there was never a significant color. He continued this exploratory work during the summer of 1975 and he continued to get colors as he panned but not enough to warrant going into production. During the summer of 1976 between July 5 and August 3, a 4-inch suction dredge worked in the bed of the Burnt River and some gold was recovered. The dredge was provided by one individual, Jerry Hoffman did most of the physical labor and he (Timm) paid some of the expenses. Approximately one ounce of gold was recovered and split three ways. Timm estimated that approximately twenty yards of gravel were worked to produce this ounce but as they went down in the riverbed they had a problem with large boulders. It was hard getting them out, or getting around them to process the gravel. "Most of the time was spent sorting the rocks, getting the bigger rocks out, and unplugging the suction hose on the dredge, which plugged up constantly. (Tr. 50)

Mr. Timm stated that he left the claims in December 1975 because he was having a hard time making a living and due to the fact that the claims were isolated and not a suitable place in which to rear a young child. While he has not given up hope of mineral value in the high bar, it would be his present intention to go back and work the river bottom where the values are present.

Jerry Hoffman testified that he and his wife lived on the claims from April 1976 to the middle of September. During that time he operated the dredge owned by Louis Johnson who supervised the operation. They had trouble in keeping the machine operating due to the boulders but were able to produce between three-quarters of an ounce and an ounce of gold in approximately twenty yards of material were processed to produce the gold and that the mining was getting better the deeper they got. He felt there were sufficient values present in the riverbed to justify a prudent man in further expenditure of time, effort and money to develop a paying mine.

The Government established a prima facie case with respect to paragraph 5(b) of the complaint and it is incumbent on contestee not only to overcome this prima facie case but to establish by a preponderance of the evidence the necessary elements of a valid discovery. Contestee's counsel points out in his brief that at the current price of gold (\$144.00 per ounce at the time of hearing) the material in the river bottom ran in excess of \$7.00 per yard. Even assuming these figures to be correct [i.e., one ounce of gold per twenty cubic yards of material processed], it took twenty man days to process this material (presumably due to the boulders in the riverbed). Labor costs alone would run approximately \$20.00 per day and there would be the additional costs of maintenance and operation of the dredge. This is hardly indicative of a mineral deposit of such quality and quantity as to warrant a person of ordinary prudence in the expenditure of time and money with the reasonable hope of developing a paying mine. It is recognized that contestee and Mr. Hoffman think sufficient values are present the deeper one gets into the riverbed. However, this is mere speculation.

Accordingly, the No Name and Tobias placer mining claims are declared invalid.

Michael L. Morehouse
Administrative Law Judge

