

E. M. KOPPEN

IBLA 78-443

Decided August 31, 1978

Appeal from letter-decision of Montana State Office, Bureau of Land Management, rejecting mining claim certificates of location, EK 1 through 10.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

Where certificates of location as to mining claims have not been filed (received and date stamped) at the proper Bureau of Land Management office within 90 days of the date of location, as required by the regulation, 43 CFR 3833.1-2(b), for claims located after October 21, 1976, the Bureau must refuse to accept the certificates and declare the claims to be null and void.

2. Evidence: Burden of Proof -- Evidence: Presumptions

A mining claimant who is required by 43 CFR 3833.1-2(b), to file certificates of location with the Bureau of Land Management within 90 days of the date of location of his claims, has the burden of rebutting the presumption that Bureau officials properly discharged their official duties in receiving and date stamping all such certificates properly tendered to them. A mere assertion that Bureau officials did not properly discharge their duties fails to meet the claimant's burden of proof.

3. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

Neither the Federal Land Policy and Management Act of 1976 nor the applicable regulations make provision for relief where the death of an employee instructed to file certificates of location for the mining claims of his employer, as required by 43 CFR 3833.1-2(b), causes the filing to be more than 90 days after the date of location of the claims.

APPEARANCES: E. M. Koppen, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

E. M. Koppen has appealed from a letter-decision of the Montana State Office, Bureau of Land Management (BLM), dated April 24, 1978, rejecting his mining claim certificates of location, EK 1 through 10, because he failed to timely file the certificates.

[1] The pertinent regulation, 43 CFR 3833.1-2(b), provides that:

The owner of an unpatented mining claim, mill site or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim * * *. [Emphasis added.]

Failure to make a timely filing is "deemed conclusively to constitute an abandonment of the mining claim, mill site, or tunnel site and it shall be void." 43 CFR 3833.4(a) 1/

On April 24, 1978, appellant's certificates of location, EK 1 through 10, with a cover letter signed by appellant and dated November 16, 1977, were discovered in a box in the Public Room of the BLM State Office in Billings, Montana. The box apparently was used to collect Micro-Fiche and CDI documents, which members of the public took out and returned during the course of the day.

1/ This regulation implements section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b).

Appellant's cover letter stated:

Delivered for filing or recording herewith as required under the new law regarding mining claims registration are copies of the certificates of location * * * for claims I located in Jefferson County, Montana on September 6, 1977, * * *.

The copies of the certificates of location were date stamped April 24, 1978. There is no evidence in the record that the BLM State Office had any knowledge of appellant's certificates prior to this date.

As set out in the pertinent regulation, for there to be a proper filing, the copies of the certificates of location must be "received and date stamped." 43 CFR 3833.1-2(b). The earliest date at which appellant's certificates were so filed was April 24, 1978. This was 230 days after the date the claims had been located (September 6, 1977) and it clearly did not satisfy the requirements of the regulation. Accordingly, the certificates of location were properly rejected. See Irwin W. Sweeney, 34 IBLA 205 (1978); Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (1978).

In his statement of reasons for appeal, appellant contends that an employee, who had been entrusted with the certificates of location and had been instructed to file them in the BLM State Office, reported that he had "left them to be filed," presumably, "shortly" after the date on the cover letter, which was November 16, 1977. This would have been well within the 90-day requirement.

However, there is no evidence in the record that the certificates were actually received by the BLM State Office at that time and we can only conjecture as to what actually happened to them between the time the employee was entrusted with them and when they showed up in the box in the Public Room of the BLM State Office. 2/ The fact of the matter is that they were not properly filed (received and date stamped) until April 24, 1977, well after the 90-day limit. The State Office properly rejected the certificates.

[2] Appellant also contends that the certificates might have been "misplaced" by the BLM State Office prior to the expiration of the 90-day period and discovered and properly filed only afterwards.

2/ We would point out that \$50 in cash was found attached to the certificates, when they were discovered in the box. It strikes us as highly unusual for an individual to place cash in a receptacle to which the public has access, instead of depositing the papers with the proper person and obtaining a receipt for the filing fee. Appellant has tendered no receipt for the filing.

There is no evidence in the record to support this contention. Moreover, appellant had the burden of rebutting the presumption that BLM officials properly discharged their official duties in receiving and date stamping all certificates of location properly tendered to them. See A. G. Golden, 22 IBLA 261 (1975); AMOCO Production Company, 16 IBLA 215 (1974). He has not met his burden of proof.

[3] As an alternative theory, appellant concedes that the filing may have been late but argues that it was "caused" by the death of the employee entrusted with filing the certificates of location and that this excused compliance with the requirements of the regulation. ^{3/} In support of this contention he cites Phillip Stimatze, 22 IBLA 309 (1975).

The cited case, however, is inapposite. It involved reinstatement of an oil and gas lease terminated for nonpayment of rent. There the statute specifically provides for reinstatement of an oil and gas lease in certain situations where the requirement as to timely payment of rent has not been complied with. 30 U.S.C. § 188(c) (1970). No such exculpatory provision is contained in the applicable statute involved herein. Belton E. Hall, 33 IBLA 349 (1978); Irwin W. Sweeney, *supra*.

Appellant is, of course, at liberty to relocate his claims and file appropriate instruments within the time period prescribed by the regulation if the lands in issue have not been otherwise appropriated or withdrawn.

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.

James L. Burski
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Douglas E. Henriques
Administrative Judge

^{3/} The employee was killed in an automobile accident sometime in December 1977.

