

UNITED STATES
v.
RUSS KNECHT

IBLA 78-544

Decided January 8, 1979

Appeal from decision of Administrative Law Judge Dean F. Ratzman declaring the High Llama placer mining claim null and void. Contest CA-4244.

Affirmed.

1. 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.

2. 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.

3. Mining Claims: Contests

Mineral values on a claim may properly be tested by taking dry samples and washing them down to a concentrate. The absence of adequate water to run a dredging operation at the claim due to drought conditions is immaterial, as it is not necessary to run a dredge in order to sample the mineral values there.

4. Mining Claims: Contests

It is incumbent upon a mining claimant to keep his discovery points available for inspection by Government mineral examiners. Where he does not, he assumes the risk that the mineral examiner will not be able to verify the discovery of the alleged mineral deposit, and his unsupported argument that the samples taken by the examiner are not representative will be rejected.

5. Mining Claims: Contests

Unless and until the lands within a mining claim are patented to the claimant, they are Federal lands, and the Government retains the right to enter the lands at any time without search warrants, including the right to remove material samples from the claim in order to determine whether the land is mineral in character and whether a valuable deposit of a locatable mineral has been discovered by the claimant.

6. Mining Claims: Contests—Mining Claims: Hearings

As the Government is required to adjudicate mining claims contests under its own rules and regulations, a customary review of the validity of a claim by a district examining committee is immaterial to the adjudication of the actual validity of the claim. Local customs relating to validity of a claim may only add to the Federal mining law; such customs cannot replace Federal requirements for adjudicating the validity of claims.

APPEARANCES: Charles F. Lawrence, Esq., Regional Attorney, Office of the General Counsel, Department of Agriculture, San Francisco, California, for appellee; Russ Knecht, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Russ Knecht appeals from a decision of Administrative Law Judge Dean F. Ratzman, dated June 2, 1978, declaring the High Llama placer mining claim null and void. We affirm.

On October 6, 1977, the Bureau of Land Management (BLM), on behalf of the Forest Service (FS), initiated contest number CA-4244.

The contest complaint charged that the High Llama placer mining claim was not valid because no valuable mineral deposit had been discovered within the limits of the claim, because the land embraced within the claim is nonmineral in character, because the claim was not held in good faith for mining purposes, and because the claim exceeds the maximum of 20 acres. On December 28, 1977, Knecht filed his answer to this complaint, opposing the contest. Accordingly, the matter was set for hearing and heard on April 18, 1978, in Chico, California, before Administrative Law Judge Ratzman.

At this hearing, FS presented testimony of a mineral examiner that Knecht had not made a discovery of a valuable mineral deposit, that he had cut timber and constructed a cabin, that there was very little evidence of actual mining works, that the location points indicated by Knecht required that the claim be larger than 20 acres, and that the claim was not laid out on a north-south line. Knecht did not testify or present other evidence either indicating the presence of a mineral deposit on the claim, or concerning any of the issues at hand. On June 22, 1978, Judge Ratzman issued a decision declaring the claim null and void because FS, the complainant in the contest, established a prima facie case that Knecht had not made a discovery of a valuable mineral deposit, and because Knecht failed to meet his burden of showing the contrary by a preponderance of the evidence. Judge Ratzman also held that FS had sustained the charges in the complaint that the claim was not being held in good faith and that it exceeded 20 acres. He made no ruling on the question of the nonmineral character of the land, noting that there was no need to do so.

Knecht filed a timely notice of appeal of this decision, in which, inter alia, he attacks the validity of the tests run by FS to determine whether valuable minerals were present at the claim. He asserts that the samples taken by FS were invalid because, owing to drought conditions at the claim, it was impossible to operate a dredge when they were taken. As he intended to mine by dredging, Knecht submits that the only valid way to determine if there was a valid claim was to sample the claim by dredging it. Knecht also challenges the authority of FS to remove minerals from the claim against his express wishes.

[1] 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, sub nom. Roberts v. U.S. 423 U.S. 829 (1976).

[2] Judge Ratzman held that FS had established a prima facie case of no discovery by the testimony of Emmett B. Ball, a graduate mining engineer with more than 25 years experience in that field. Ball testified that the results of tests made on samples which he took in the only place on the claim where he could find evidence of mining activity did not reveal the presence of anything of mineral significance. 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. Bechtold, 25 IBLA 77 (1976); United States v. MacIver, 20 IBLA 352 (1975); United States v. Ramsey, 14 IBLA 152 (1974); United States v. Blomquist, 7 IBLA 351 (1972). Accordingly, we affirm Judge Ratzman's holding.

[3] Appellant challenges the accuracy of the sampling method used by Ball, as well as the representative character of the samples as to mineral values on the claim. He asserts that it was impossible for Ball to examine the mineral content of the claim because there was not enough water at the time to operate a dredge, the means by which appellant intended to extract the minerals. This argument is not persuasive. Although appellant may have intended to extract minerals from the claim by using a dredge, it was not necessary for Ball to set up a dredge in order to determine whether there were adequate minerals on the claim to meet the requirement of discovery. It was enough for him to take dry samples from the creek bed and to wash them down to a concentrate in order to assay the mineral content of the material there. Ball certainly was not required to duplicate completely appellant's proposed extraction operation in order to show that it would not be productive. Government mineral examiners are not required to perform discovery work for the benefit of the 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).

[4] Appellant also asserts that the samples taken by Ball were not representative of the mineral values present on the claim. However, appellant not only refused to cooperate with Ball by showing him where minerals might be found, but he repeatedly refused to allow Government mineral examiners to take any samples on the claim (Tr. 11, 15, 19-20, 21, 38-39). As a result, Ball was able only to take samples from outside the claim lines and, when appellant was not there, from one location on the claim, which was the only place where he could detect exploration work by appellant. The assay report indicated mineral values of less than 5 cents per cubic yard.

It is incumbent upon the mining claimant to keep his discovery points available for inspection by Government mineral examiners. United States v. Gayanich, 36 IBLA 111, 117 (1978); United States v.

Bechtold, supra at 85 (1976). If there were any deficiency in the sampling used by FS to show the absence of mineral values, which we do not find, it resulted from appellant's repeated unjustified refusal to allow inspectors to remove samples from the claim. Where a claimant fails to keep his discovery points open and available for sampling, he assumes the risk that the mineral examiner will be unable to verify the discovery of the alleged mineral deposit. United States v. Bechtold, supra; United States v. MacIver, supra; United States v. Bass, 6 IBLA 113 (1972); United States v. Laing, 3 IBLA 108 (1971).

[5] Appellant challenges the right of FS to enter the claim and remove samples. The lands within a mining claim are Federal lands unless and until they are patented, and the Government retains the legal title and the right to enter these lands at any time without search warrants pursuant to its power and obligation to administer the lands according to the terms of the mining laws. This right includes the right to remove mineral samples from the claim. United States v. Gavanich, supra at 117, and cases cited.

[6] In his answer to the contest complaint, appellant asserted as follows:

My claim has been examined by Mark Weinstein, Vice President of the Hayfork Mining District, and he found that I had moved considerable ground, am presently developing my mineral ground, that I have complied with all legal filing requirements, and he concluded that my claim was in order. Mr. Weinstein informs me that pursuant to Title 30, sections 22 and 28, U.S.C. that the Hayfork Mining District has promulgated a custom into a rule that any contest in the Hayfork Mining District be brought before the miners of the district via the district's examining committee. By statutory authority any violation of this would be an infringement on my right to due process.

While, under 30 U.S.C. § 22 (1976), all valuable mineral deposits in lands belonging to the United States are free and open to exploration and purchase in part "according to the local customs or rules of miners in the several mining districts," this provision is limited to cases where these customs are "not inconsistent with the laws of the United States."

Local customs relating to validity of a claim may only add to the Federal mining law; such customs cannot replace the Federal requirements for adjudication of the claim's validity. Cf. United States v. Denham, 29 IBLA 185 (1977) (holding that State mining law may only add to Federal mining law). Under the statute, the lands are open only "under regulations prescribed by law." While the custom in

appellant's area may be to have a district examining committee review the validity of a claim, its determination does not bind the Federal Government, which is required instead to adjudicate the validity of a contested claim in accordance with the terms of its regulations, which implement the Administrative Procedure Act, 5 U.S.C. § 554 *et seq.* (1976). *See* 43 CFR 3872.2. The procedure was followed correctly in the instant case, and the results following from this procedure apply to the exclusion of any proceeding before the mining district examining committee's review. As the United States Supreme Court has repeatedly held, this Department functions as a special tribunal with quasi-judicial powers in the adjudication of the acquisition of rights and claims affecting public lands, including mineral lands. *Best v. Humboldt Placer Mining Co.*, 371 U.S. 334 (1963); *Cameron v. United States*, 252 U.S. 450 (1920).

As the record supports Judge Ratzman's finding that the Government established a *prima facie* case of lack of discovery, and as appellant presented no proof whatever to controvert this finding and meet his burden of showing the contrary, we conclude that, for this reason alone, Judge Ratzman properly concluded that the High Llama placer mining claim is null and void.

We also affirm Judge Ratzman's findings that the claim was not being held by appellant in good faith for mining purposes, and that it is excessive in area in that it is not limited to 20 acres. There is evidence in the record showing that appellant had set up a saw mill and cut pine and oak lumber (Tr. 27, 30-31). He used the pine to build a cabin on the claim and stacked the oak planks (Tr. 31). There was very little evidence of any actual mining work on the claim (Tr. 27-28). Although he disputes the administrative law judge's finding that he was not holding the claim in good faith, appellant has failed to present any evidence to the contrary either before Judge Ratzman or this Board.

There is also testimony that the location points indicated by appellant give his claim dimensions which result in its being approximately 20-2/3 acres (Tr. 14), two-thirds acre in excess of the maximum allowed to a placer mining claimant by the mining laws. 30 U.S.C. § 35 (1976); 43 CFR 3842.1-2(b). Moreover, appellant's claim also violated this section in that it was set out some 20 degrees off true north-south (Exh. 4; Tr. 6, 12-13) and so did not conform to the rectangular survey system.

As Judge Ratzman made no findings on the question of whether the land is nonmineral in character, we need not address this issue. Any of the three remaining findings justifies voiding the claim.

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.

Newton Frishberg
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

