

UNITED STATES
v.
DAN S. RUSSELL

IBLA 78-530

Decided April 30, 1979

Appeal from decision of Administrative Law Judge Michael L. Morehouse declaring Klondike Nos. 1-7 placer mining claims null and void.

Affirmed.

1. 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.

2. Mining Claims: Discovery: Generally

Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit.

APPEARANCES: Harold Banta, Esq., Banta, Silven and Young, Baker, Oregon, for the appellant; Jim Kauble, Esq., Office of the General Counsel, Department of Agriculture, Portland, Oregon, for the Government.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Dan S. Russell and Donald V. Miller have appealed from a decision of Administrative Law Judge Michael L. Morehouse, dated June 7, 1978,

declaring their Klondike Nos. 1-7 placer mining claims null and void for lack of discovery of a valuable mineral deposit. The claims are situated within the Wallowa-Whitman National Forest in sec. 7, T. 7 S., R. 36 E. and sec. 12, T. 7 S., R. 35 1/2 E., Willamette meridian, Grant County, Oregon.

[1] The decision of the administrative law judge sets out a summary of the pertinent evidence and the applicable law as well as his findings and conclusions. We are in agreement with his decision and adopt it as the decision of this Board. A copy is attached hereto.

In their statement of reasons for appeal, appellants contend that the Government failed to establish its prima facie case of the lack of a discovery because the Government mineral examiners Meschter and Minnich, did not sample "on or near bedrock" where the "medium to coarse flaked gold," characteristic of the claims, was to be expected, and refused all requests to do so. Furthermore, appellants argue, they were not given a reasonable opportunity to prepare appropriate sites for sampling. Appellants point out that they were given one day's notice prior to Meschter's examination of the claims on September 25, 1971. They characterize both mineral examinations as mere "random surface sampl[ing]" which proved nothing more than that "[they] dug in the wrong places."

Samples were taken by the Government mineral examiners from areas where appellants had engaged in recent mining activity. The principal area of activity was a pit or quarry located on the Klondike No. 1 placer mining claim and cut into the contour of a hill about 100 yards north of the North Trail Creek. Two samples (K 1-1 and K 1-2) were taken from this pit on September 25, 1971 by Meschter and fire assayed (Exh. G-15, pp. 11-12). On July 17, 1972, another two samples (K-2 and K-3) were taken, one from a dozer cut about 40 yards north of the North Trail Creek and the other from a cut in the north bank of the North Trail Creek (Exh. G-16, pp. 4-5). After being informed by appellants that they had gotten a "bottle of gold" from a cut about 20 feet east of the area where the K-3 sample was taken, Meschter returned to this new working on September 19, 1972, and took another sample (K-4) (Exh. G-16, p.5). All three samples were fire assayed. Based on these samples, Meschter, in his written report, concluded that no discovery of a valuable mineral deposit had been made on appellants' claims. Minnich traced Meschter's steps to the extent of taking samples in the main pit area and in the K-2 sample area (Tr. 15-16, 21). The results of panning confirmed Meschter's conclusion (Tr. 15, 22).

The Government mineral examiners were not required to explore any further than the exposed workings of the mining claimants. If, as appellants argue, gold was to be recovered only from the soil "on or near bedrock" it was their responsibility to make such sites available for sampling. We note that they had numerous opportunities to do so as the Government mineral examiners made several visits to the mining claims.

It is well established 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. Timm, 36 IBLA 316 (1978); United States v. Taylor, 19 IBLA 9, 82 I.D. 68 (1975); United States v. Griggs, 8 IBLA 331, 79 I.D. 682 (1972).

[2] Moreover, appellants have had ample opportunity prior to the hearing in this case to uncover deposits of gold located "on or near bedrock" and to present them as proof of a discovery. They have submitted substantially only a fire assay and spectrographic analysis of one sample taken about 60 yards north of the North Trail Creek (Exh. R-2). As the administrative law judge correctly noted, while the analysis indicated specific and substantial values for gold, it was calculated based on one pound of black sand and did not take into account the fact that an estimated 500 lbs. of gravel would have to be processed in order to yield each pound of black sand (Tr. 79-80). Even assuming the sample had denoted a high value in gold, isolated showings of high values or high values determined without proper regard for the quantity of material processed and concentrated will not support a claim of a discovery. United States v. Coleman, 390 U.S. 599 (1968); United States v. Kingdon, 36 IBLA 11 (1978).

Appellants have also submitted a report, dated August 29, 1969, prepared by C. J. Coulson which states that small (1/16") grains of gold were recovered from a panning sample taken in August, 1969 (Exh. R-1). The report recommended that appellants engage in "additional work," including running 100 cubic yards of soil through their equipment, in order to determine the extent of their deposit (Exh. R-1 p. 17). The report concluded by stating that the claims had "sufficient merit to justify financial assistance * * * if the proposed 100 cubic yard sample yield[ed] [an] economic amount of gold" (Exh. R-1, p. 18). The 100 cubic yard sample was never sent (Tr. 94). In any case, mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development, does not constitute a valuable mineral deposit. Chrisman v. Miller, 197 U.S. 313 (1905); Barton v. Morton, 498 F.2d 288 (9th Cir. 1974); United States v. Dillman, 36 IBLA 358 (1978).

This is the sum total of appellants' evidence and, as such, it is not sufficient to meet their burden of proving that there exists on the claims 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.

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

James L. Burski
Administrative Judge

We concur.

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

June 7, 1978

UNITED STATES OF AMERICA, : OREGON 13808
 :
 Contestant : involving the Klondike
 : Nos. 1-7 placer mining
 : claims situated in Sec. 7,
 : T. 7 S., R. 36 E.; and
 DAN S. RUSSELL, and : Sec. 12, T. 7 S., R. 35 1/2 DONALD V. MILLER
 : E., Willamette Meridian, : (within
 the Wallowa-Whitman :
 : National Forest, Grant
 Contestees : County, Oregon.

DECISION

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

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

Before: Administrative Law Judge Joseph A. McCreesh

This is a Proceeding involving the validity of the above 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 the interior, at the request of the Forest Service, Department of Agriculture.

40 IBLA 313

Pursuant to 43 CFR 4.451, the Bureau of Land Management issued a complaint on November 24, 1976, charging that the subject mining claims were invalid because they had not been perfected by the discovery of a valuable mineral deposit. Contestees filed a timely answer denying the material allegations of the complaint. Hearing was initially set on June 23, 1977, at Baker, Oregon, at which time Mr. Banta appeared and requested a continuance due his inability to contact Mr. Russell. The hearing was continued and subsequently took place on October 17, 1977, at Baker, Oregon. 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, 458 F.2d 238 (9th Cir. 1974); United States v. Winegar, 16 IBLA 112, 81 I.D. 370 (1974).

When the Government contests the validity of a mining claim, it bears only the burden of proof 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, a qualified mining geologist employed by the Forest Service, testified with respect to the mining history of the area, the geology of the mining claims, previous field examinations of the claims, his own examination of the claims, the values of samples taken from the claims, and his opinion concerning the value of the claims for mining purposes. The evidence established that the claims had originally been examined by a Daniel Y. Meschter, a mining engineer employed by the Forest Service, in 1971 and 1972. See reports of mineral examination Ex. G-15 & Ex. G-16. He took four samples from the claims which, after assay, showed gold values ranging from none to 14.655 milligrams of gold per ton (Exs. G-12, G-13, & G-14). It was his opinion that, due to these minimal values, no discovery of a valuable mineral deposit had been made on the claims. Mr. Minnich testified that he also examined the claims in October, 1976, and May, 1977. He took two samples from one area sampled by Mr. Meschter, but did not send the samples in for assay since, when he panned the samples down he could observe no colors in the black sand indicating little or no value. He stated that based on his review of the Meschter mineral examinations and his own examination of the claims, it was his opinion that there had been no discovery.

Mr. Russell testified that he has done extensive work on ditches on the claims and has performed his annual labor. At various times he has had people assisting him and has paid them with gold that has been recovered. He took a sample (see Ex. G-2, spot marked R-2) which on assay (Ex. R-2) showed values of 2.6 troy ounces of gold per ton and .38 ounces of silver per ton. This assay was a semi-quantitative spectrographic analysis which according to Mr. Minnich is not a complete quantitative assay and is used mainly to indicate the presence or lack of a mineral and not to get quantity per tonnage. Further, the evidence established that this assay (Ex. R-2) was an analysis of approximately one pound of black sand which had been recovered from approximately five hundred pounds of gravel. The assay was of only the black sand and showed values of 2.60 ounces of gold per one ton of black sand. The evidence did not establish exactly how much material would have to be processed to produce one ton of black sand but rudimentary arithmetic would indicate in the neighborhood of several hundred tons. Mr. Russell testified that he disagreed with Mr. Meschter's sampling methods, that he did not really think that Mr. Meschter knew what he was about, and that he (Russell) would, as a reasonable man invest money in developing the mine.

Mr. Banta, in his Posthearing brief, contends that the Government has failed to establish a prima facie case since the Meschter samples were improperly taken and Minnich merely reviewed the Meschter examinations in forming his own opinion. I disagree. The reports of mineral examination (Exs. G-15 & G16) are very detailed. In addition, Mr. Minnich testified that although he did review the reports of Meschter, he also examined the claims in question and saw nothing to indicate a discovery. Whatever defect, therefore, which the record may establish with respect to the method of sampling by Mr. Meschter, such defect goes only to the weight and not to the admissibility of Mr. Meschter's findings and conclusions. When these are considered together with the opinion of Mr. Minnich, it must be concluded that the Government has established a prima facie case. As stated above, the ultimate burden is on the mining claimant to show by a preponderance of the evidence that the claims are valid. Here the contestees did not present sufficient evidence from which any conclusion might be drawn as to (1) the amount of mineralization that might be available for extraction; or (2) the costs of extraction. Contestees' one sample is of dubious value, as explained above. Accordingly, it must be concluded that the contestees did not meet their burden of proof by showing that a valuable mineral deposit has been found within the contested mining claims.

Klondike Nos. 1-7 placer mining claims are, therefore, declared invalid.

Michael L. Morehouse

Administrative Law Judge

APPEAL INFORMATION

The contestees, as the parties adversely affected by this decisions have the right of appeal to the Interior Board of Land Appeals. The appeal must be in strict compliance with the regulations in 43 CFR Part 4. (See enclosed information pertaining to appeals procedures.)

