

JAMES E. YATES

IBLA 79-328

Decided September 11, 1979

Appeal from decision of the Oregon State Office, Bureau of Land Management, holding Jey Aero mining claim void. OR MC 2729.

Affirmed.

1. Applications and Entries: Generally – Applications and Entries: Filing – Federal Land Policy and Management Act of 1976: Assessment Work – Mining Claims: Abandonment – Mining Claims: Assessment Work

Under the Federal Land Policy and Management Act of 1976, § 314, 43 U.S.C. § 1744 (1976), the owner of unpatented mining claims located in 1977 must file an affidavit of assessment work or notice of intention to hold the claim prior to Dec. 31 of the following calendar year, 1978, or the claim will be conclusively deemed to have been abandoned. Where an appellant asserts on appeal that he timely mailed proof of labor to the Bureau of Land Management, but the documents were not received by that office, the documents cannot be considered as filed with that office unless and until they are received by it.

APPEARANCES: James E. Yates, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a decision, OR MC 2729, ^{1/} dated April 4, 1979, by the Oregon State Office, Bureau of Land Management (BLM), holding the Jey Aero mining claim void for failure to file either an annual assessment statement or a notice of intention to hold the claim as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the pertinent regulations, 43 CFR 3833.2-1.

Appellant's claim was located on September 10, 1977.

[1] 43 U.S.C. § 1744(a)(1) and (2) (1976) of FLPMA and the pertinent regulation, 43 CFR 3833.2-1(b)(1), require that the owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the claim was located, file with the State Office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Failure to file the required instruments is deemed conclusively to constitute an abandonment of the mining claims. 43 U.S.C. § 1744(c); 43 CFR 3833.4(a). Since the claim was located in 1977, either evidence of assessment work or a notice of intention to hold the claim had to be filed prior to December 31, 1978.

The decision appealed from states that neither of the above documents was received by BLM prior to December 31, 1978.

Appellant asserts in his statement of reasons:

1. That I caused to be mailed to the Oregon State Office of Bureau of Land Management a copy of the Proof of Labor on Mining Claim which was filed for record with the Stevens County Auditor on September 8, 1978 under Auditor's file No. 475856 (State of Washington). A copy of said Proof of Labor on Mining Claim is attached hereto with subjoined affidavit and is incorporated [sic] herein as if fully set forth.

2. That upon careful review of the various information which I have received concerning the Federal Land Policy & Management Act of 1976, I believe that I have complied with all rules and regulations covering the recording and filing of Mining Claims and Evidence of Assessment Work under both Federal and State laws.

^{1/} Although the caption of the appeal adverts to OR MC 2733, the body thereof correctly refers to OR MC 2729, as pointed out in BLM's transmittal memorandum. OR MC 2733 involves a claim in Oregon of Dale Huett.

Appellant asserts that in the latter part of September 1978, he mailed a copy of his proof of labor to the State Office at Portland, Oregon. However, there is no evidence of record to show that the proof of labor was ever received by BLM. If appellant did in fact mail his proof of labor, and it was lost in the mail, he selected the means of transmittal and must bear the consequences of non-delivery. See Amanda Mining and Manufacturing Association, 42 IBLA 144 (1979). The Department in discussing a similar contention, stated in H. P. Saunders, Jr., 59 I.D. 41, 42-3 (1945), as follows:

Filing, it must be observed, is not complete until the document is delivered and received. "Shall file" means to deliver to the office and not send through the United States mails. . . . A paper is filed when it is delivered to the proper official and by him received and filed. United States v. Lombardo, 241 U.S. 73, 76 (1916); Poynor v. Commissioner of Internal Revenue, 81 F. (2d) 521, 522 (C.C.A. 5th, 1936); Weaver v. United States, 72 F. (2d) 20, 21 (C.C.A. 4th, 1934); Tyson v. United States, 76 F. (2d) 533, 534 (C.C.A. 4th, 1935); Wampler v. Snyder, 66 F. (2d) 195, 196 (App. D.C., 1933); Stebbins Estate v. Helvering, 74 App. D.C. 21, 121 F. (2d) 892, 894 (1911); Greasy v. United States, 4 F. Supp. 175, 177-178 (D.C. W.D. Va., 1933).

Cf. Mar-Win Development Co., 20 IBLA 383 (1975). Accordingly, since neither of the required documents was filed, BLM properly declared the claim void. Bruce Parks, 42 IBLA 18 (1979).

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.

Frederick Fishman
Administrative Judge

I concur.

Joan B. Thompson
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

I concur in the result but recognize that exigencies often require use of the United States mails, which method of transmittal is authorized by the Department. E.g., 43 CFR 1821.2-2(d). Under section 1821.2-2(f), however, it is clear that deposit in the mail does not itself constitute filing. ^{1/} The authority of the Board is therefore limited. If an appellant does use the mail system to transmit the required documents, he would be better protected to send them early, using the postal "return receipt requested" procedure. If no receipt is returned, he would then be alerted to the problem. If a document is timely received at the proper Departmental office, the return receipt would be proof of proper filing under section 1821.2-2(f).

Joseph W. Goss
Administrative Judge

^{1/} Section 1821.2-2(f) provides:

"(f) Except when (c) of this section is applicable, filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing."

