

UNITED STATES
v.
COOLEY

IBLA 79-464

Decided October 15, 1979

Appeal from decision of Administrative Law Judge Michael L. Morehouse declaring mining claims invalid. Arizona 9849.

Affirmed.

1. Mining Claims: Discovery: Generally

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

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

When the Government contests a mining claim on a charge of no discovery, it assumes 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 and still exists within the limits of the claim.

3. Administrative Procedure: Hearings -- Mining Claims: Hearings

The Government has established a prima facie case when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

APPEARANCES: John A. Cooley, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

John A. Cooley appeals from a decision of Administrative Law Judge Michael L. Morehouse, dated May 29, 1979, declaring invalid the El Dorado Nos. 1 through 8 lode mining claims.

On March 16, 1978, the Bureau of Land Management (BLM) issued a complaint, at the behest of the Bureau of Indian Affairs, charging that the subject mining claims were invalid because they had not been perfected by the discovery of a valuable mineral deposit.

An evidentiary hearing was conducted on March 1, 1979, at Phoenix, Arizona.

[1, 2, 3] The Judge found from the evidence that the contestant established a prima facie case of no discovery, and that the contestee failed to show by a preponderance that a discovery existed at the relevant times. The Judge's decision sets out the pertinent evidence and the applicable law. We agree with the decision and adopt it as the decision of this Board. A copy of it is attached hereto.

Appellant states on appeal that the Government mineral examiners failed to properly inspect his claims. Appellant also states that he could have further assays run.

The transcript reveals that several geologists 1/ carried out diligent sampling work on appellant's claims and that in this task they received little support from appellant. The preponderance of the evidence does not reveal a need for further sampling nor in any way indicate that additional assays would change the result. Appellant has demonstrated no error which would require disturbing the decision reached by the Judge.

1/ Although the Judge stated that the geologists were "consulting geologists employed by the Forest Service" (page 3 of his decision), the transcript shows no nexus between them and the Forest Service and they testified they were under contract to the Bureau of Indian Affairs to examine mining claims in the Papago Indian Reservation.

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.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

May 29, 1979

UNITED STATES OF AMERICA,	:	ARIZONA 9849
	:	Involving the El Dorado
Contestant	:	Nos. 1 through 8 lode
	:	mining claims located
v.	:	in Sec. 12, T. 12 S.,
	:	R. 2 E., and Sec. 7,
JOHN A. COOLEY,	:	T. 12 S., R. 3 E.,
	:	GSR Mer., Pima County,
Contestee	:	Arizona.

DECISION

Appearances: Fritz L. Goreham, Esq., Office of the Field
Solicitor, Department of the Interior,
Phoenix, Arizona, for Contestant;

John A. Cooley, Phoenix, Arizona, pro se.

Before: Administrative Law Judge Morehouse

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 Arizona State Office, Bureau of Land Management, Department of the Interior.

Pursuant to 43 CFR 4.451, the Bureau of Land Management issued a complaint on March 16, 1978, charging that the subject mining claims were invalid because they had not been perfected by the discovery of a valuable mineral deposit. Contestee filed a timely answer claiming, in effect, that the claims were valid. A hearing was held on March 1, 1979, at Phoenix, Arizona.

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. 370 (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).

The subject claims were located in 1949, 1951 and 1952 as set out in the complaint. They are within the Papago Indian Reservation and the land encompassed by the claims was closed to mining entry on May 27, 1955. Thus, to establish the validity of the claims, contestee must show a valid discovery by a preponderance of the evidence as of the time of withdrawal or at some other time in the past and maintained to the time of the present challenge. See Cameron v. United States, 252 U.S. 450 (1919); Udall v. Snyder, 405 F.2d 1179 (10th Cir. 1968); United States v. Gunsight Mining Company, 5 IBLA 62 (1972).

The claims are situated in the central portion of the Sheridan Mountains approximately six and a half miles from Santa Rosa, also located on the Reservation. They were examined in December 1976 and February 1977 by Mr. Wallace Platt and Dr. Charles Fair, consulting geologists employed by the Forest Service. Due to illness, Mr. Cooley was unable to be present during the various examinations, however, he provided sketch maps. Mr. Platt and Dr. Fair testified generally concerning their field examinations of the claims, the values of samples taken from the claims (Ex. G-9), and their findings and conclusions concerning the value of the claims for mining purposes. It was Mr. Platt's opinion that a prudent man would not be justified in spending his time and means with a reasonable prospect of success in developing a paying mine on any of the eight claims because of the low assay values of the samples, the remote location of the claims, and the inability to postulate any tonnage reserves.

Mr. Cooley testified at some length concerning the work he has done on the claims and the values present. He has had the claims since approximately 1950 and did most of his work on them between 1950 and 1954. On Claim No. 1, he cut a sample from a winze in the tunnel which assayed at \$125.00 a ton figuring gold at \$35.00 an ounce. He did not know how much material of this value was present on the claim. On Claim No. 2, a sample assayed at 2.6 percent copper and 2 ounces silver per ton. On Claim No. 3, a sample assayed at 8 percent copper and 2 to 3 ounces of gold per ton. He did not know how much of this material was on the claim. An assay of a sample on Claim No. 4 was not very good. On Claim No. 5, silver ran \$15.00 or \$16.00 per ton. He did very little work on Claim No. 6. He got pretty good gold values from Claim No. 7, approximately \$20.00 per ton, but this came from a very small vein. An assay of a sample from Claim No. 8 ran approximately \$15.00 per ton. Mr. Cooley stated that over the years he milled approximately 2 eight-ton truck loads and thinks that he still has the concentrates someplace.

The government established a prima facie case concerning invalidity through the testimony of Mr. Platt and Dr. Fair. As noted above, the ultimate burden is on the mining claimant to show by a preponderance of the evidence that the claims are valid. This he has failed to do. It is recognized that there is some gold, silver and copper mineralization on the claims, although no assay reports

were offered in support of Mr. Cooley's testimony. However, he did not present any evidence from which any conclusions might be drawn as to (1) the amount of mineralization that might be available for extraction, (2) the value of the mineralization that might be extracted (beyond the samples he testified to), or (3) the costs of extracting and marketing the mineralization. Without some information relating to these factors, it is impossible to conclude that there was a mineral deposit on the claims valuable for mining purposes on or before May 27, 1955, or that one presently exists.

Accordingly, the El Dorado Nos. 1 through 8 lode mining claims are declared invalid.

Michael L. Morehouse
Administrative Law Judge

APPEAL INFORMATION

The contestee, as the party adversely affected by this decision, has the right of appeal to the Interior Board of Land Appeals. The appeal must be in strict compliance with the regulation in 43 CFR Part 4. (See enclosed information pertaining to appeals procedures.)

If an appeal is taken the adverse party, the Bureau of Land Management, can be served by service upon the Office of the Field Solicitor at the address listed below.

Enclosure: Information Pertaining to Appeals Procedures

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Distribution By Certified Mail

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