

UNITED STATES
v.
CECILIA PUCCINELLI

IBLA 78-555

Decided December 19, 1979

Appeal from a decision of Administrative Law Judge R. M. Steiner declaring the Blue Jay Quartz and the Keystone Mine Quartz lode claims null and void. CA-4229.

Affirmed.

1. Administrative Procedure: Burden of Proof -- Mining Claims:
Contests -- Mining Claims: Determination of Validity

When the Government contests a mining claim, located on land withdrawn from mineral entry, the burden of presenting a prima facie case is satisfied by the testimony of a well qualified mineral examiner that he has examined the exposed workings on a claim without finding sufficient mineral values to support a conclusion there was a discovery of a valuable mineral deposit either at the time of the withdrawal or at the time of his inspections.

APPEARANCES: John J. Conway, Esq., San Mateo, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

After a hearing, administrative Law Judge R. M. Steiner declared the Blue Jay Quartz and the Keystone Mine Quartz lode claims, both located in Tuolumne County, California, to be null and void. The lands encompassing these claims had been withdrawn from mineral location on March 21, 1968, on application of Department of the Army as part of the New Melones Lake project. The decision declared that no discovery existed at the time of the withdrawal or at time of the hearing.

Cecilia Puccinelli appeals, 1/ alleging only that the Government had, at the hearing, presented no prima facie case for either ruling. Appellant presented no analysis of the evidence or argument to support these general allegations.

[1] The law is well established. When the Government contests a mining claim, it has assumed the burden of presenting a prima facie case of invalidity. 2/ Roberts v. Morton, 549 F.2d 158, 162 (10th Cir. 1977), cert. denied sub nom. Roberts v. Andrus, 434 U.S. 834 (1977); United States v. Springer, 491 F.2d 239, 242 (9th Cir. 1974), cert. denied, 419 U.S. 234 (1974). A prima facie case of lack of discovery is presented by the testimony of a Government mineral examiner that he has examined the exposed workings on a claim without finding sufficient mineral values to support the discovery of a valuable mineral deposit. The examiner's investigation need not extend beyond the mining claimant's current workings. United States v. Clark, 18 IBLA 368 (1975); United States v. Wells, 11 IBLA 253 (1973).

Applying these rules in the present case, it is clear that the Administrative Law Judge's determination was correct. The Government established its prima facie case of invalidity of the Blue Jay and Keystone mining claims through the testimony of a well qualified mineral examiner, Charles McClung, who spent several days on the claims. McClung testified that, although there probably was a valuable discovery at one time, there was no evidence that the claim had been worked since the 1930's or 1940's. He found no evidence of sufficient mineralization, either having been on the claims in 1968 or at the time of his inspections, to justify a prudent person in developing these claims. It is apparent from the record that the required prima facie showing had been made as to both claims.

Contestees failed to produce testimony that would show, by a preponderance of the evidence, the existence of a valuable discovery either at the time of the 1968 withdrawal or at present. Appellant does not allege that contestees affirmatively proved a discovery.

1/ No appeal was filed by Estate of Lorenzo G. Puccinelli, Antone Malaspina, W. H. Matteson, E. T. Matteson, Utical Gold Mining Company, Belcher Extension Consolidated Mines Co., and Mike Cuatto, who were also contestees.

2/ Once the Government has established its prima facie case, the burden of proof shifts to the mining claimant to show, by a preponderance of the evidence, that the claim is valid; the ultimate burden of proving discovery is always on the mining claimant. United States v. Springer, supra; United States v. Hunt, 29 IBLA 86 (1977).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Administrative Law Judge, declaring the Blue Jay Quartz claim and the Keystone Mine Quartz claim null and void, is affirmed.

Joseph W. Goss
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Frederick Fishman
Administrative Judge

