

H. N. CUNNINGHAM

IBLA 79-482

Decided May 7, 1980

Appeal from decisions of the New Mexico State Office, Bureau of Land Management, rejecting preference right coal lease applications NM 8592 and NM 12324.

Affirmed.

1. Coal Leases and Permits: Generally -- Coal Leases and Permits:
Leases

Where an applicant for preference right coal leases fails to present information sufficient to show that there is coal in commercial quantities on the areas for which he holds prospecting permits as required by 43 CFR 3430.1, and where he does not submit specific information showing the quantity and quality of the coal deposits in these areas, as required by 43 CFR 3430.2, his applications are properly rejected.

APPEARANCES: H. N. Cunningham, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

H. N. Cunningham (appellant) has appealed two decisions of the New Mexico State Office, Bureau of Land Management (BLM), both dated May 14, 1979, rejecting his applications for preference right coal leases. These applications were based on prospecting permits NM 8592 and NM 12324, issued on January 1, 1970, and January 1, 1971, respectively. BLM held that Cunningham had not submitted information showing that he had discovered coal in commercial quantities and had not

complied with the requirements of proof set out at 43 CFR 3521.1(b) 1/ and, accordingly, rejected his applications. Appellant filed a joint notice of appeal of these decisions.

[1] Under the terms of the Act of February 25, 1920, as amended, 30 U.S.C. § 201(b) (1976), the holder of a prospecting permit for coal is entitled to a coal lease to all or part of the lands in his permit provided that he shows to the Secretary that the land contains coal in commercial quantities. The term "commercial quantities" is defined at 43 CFR 3430.1-2(a) as referring to a coal deposit which is of such character and quantity that a prudent person would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Moreover, under 43 CFR 3430.1-1 and 3430.1-2(b), the burden is on the preference-right-lease applicant to present sufficient evidence to show that there is a reasonable expectation that revenues from the sale of the coal shall exceed the cost of developing the mine and extracting, removing, transporting, and marketing the coal. 2/

On March 19 and April 16, 1979, the Area Mining Supervisor for the Geological Survey (GS) issued memoranda reporting that the drilling logs submitted by Cunningham in support of his applications failed to disclose that he had discovered coal in commercial quantities. Appellant has not presented additional evidence of discovery on appeal, other than to resubmit the drilling logs considered by GS. We agree that the information submitted by appellant is insufficient to show that there is coal in commercial quantities on the area in question. In the absence of such a showing, appellant is not entitled to a preference right lease. 43 CFR 3430.1-1.

Additionally, appellant did not comply with the requirements set out in 43 CFR 3430.2 3/ that the applicant make a detailed showing of the quantity and quality of the coal on the lands covered by the applications. These requirements are mandatory, and failure to comply with them compels the rejection of a preference right lease application. See Kin-Ark Corp., supra at 165.

1/ See n.3, infra.

2/ These regulations, and the others set out at 43 CFR Subpart 3430 governing preference right coal leases, apply to the instant lease applications notwithstanding the fact that they were adopted in 1979 after these applications were filed in 1974. 43 CFR 3430.0-7; Kin-Ark Corp., 45 IBLA 159, 165, 87 I.D. 14, 18 (1980).

3/ We note that BLM's decisions erroneously cite 43 CFR 3521.1(b), the more general provisions governing preference right lease applications for minerals other than coal, instead of 43 CFR 3430.2.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

