

DON SAGMOEN
PERRY ADKISON
WARD I. JONES

IBLA 80-611

Decided September 17, 1980

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring lode mining claims Sad-Jo Nos. 1 through 7 abandoned and void. AA MC 37543 through 37549.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment--Mining Claims: Recordation

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management Office on or before Oct. 22, 1979, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

2. Notice: Generally--Regulations: Generally

Those who deal with the Government are presumed to have knowledge of the law and regulations duly adopted pursuant thereto.

3. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

The filing of the notice of location of a mining claim does not meet the requirement for filing a notice of intention to hold the mining claim.

APPEARANCES: Perry Adkison, Ward I. Jones, and Don Sagmoen, pro sese.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Appellants appeal from the decision of the Alaska State Office, Bureau of Land Management (BLM), dated March 28, 1980, declaring lode mining claims Sad-Jo Nos. 1 through 7 abandoned and void because of appellants' failure to file on or before October 22, 1979, evidence of annual assessment work or alternatively, notices of intention to hold the claims, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and corresponding regulations, 43 CFR 3833.2 and 43 CFR 3833.4(a).

[1] Section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1976), and the pertinent regulation, 43 CFR 3833.2-1(a), require that the owner of an unpatented mining claim located prior to October 21, 1976, shall, on or before October 22, 1979, file with BLM evidence of annual assessment work performed during the previous assessment year, or alternatively, 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 under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). The record shows that appellants located the mining claims between August 6, 1970, and August 7, 1970, and submitted copies of the location notices and other documents to BLM on October 22, 1979. Appellants failed to include evidence of annual assessment work or notices of intention to hold the claims as required by FLPMA, supra.

When appellants failed to file either affidavits of assessment work or notices of intention to hold the claims for calendar year 1979, despite the fact that appellants had filed copies of the notices of location of the claims, BLM properly held the claims to have been abandoned and declared them void. Victor Delange, 48 IBLA 222 (1980); Juan Munoz, 39 IBLA 72 (1979); and Public Service Company of Oklahoma, 38 IBLA 193 (1978).

[2] In their statement of reasons on appeal appellants put forth two arguments neither of which provide justification for failure to comply with the mandatory requirements of FLPMA. Appellants first argue that they were without notice that it was necessary to file evidence of annual assessment work or a notice of intention to hold the

claims. Secondly, appellants assert that the recordation of the mining claims with BLM served as notice of their intention to hold the claims, therefore, satisfying the requirements of 43 CFR 3833.2-1.

The fact that appellants may have been unaware of the recordation requirements, while unfortunate, does not excuse them from compliance. Those who deal with the Government are presumed to have knowledge of the law and the regulations duly adopted pursuant thereto. A. J. Grady, 48 IBLA 218 (1980); Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380 (1947). This Board has no authority to excuse lack of compliance with the statutes and regulations. Glen J. McCrorey, 46 IBLA 355 (1980).

[3] As to appellants' argument that the filing of the location notices evidence their intent to hold the claims and should satisfy the recording requirements, the law does not permit this. The requirements of filing the location notices and evidence of assessment work or notice of intention to hold are discrete requirements under the statute and the regulations. If the assessment work is performed the proof of such work is required by 43 CFR 3833.2-2 describing the form and manner of making the proof. If assessment work is not done the law permits the filing of the notice of intention to hold. Among the requirements set forth in 43 CFR 3833.2-3, a person filing a notice of intention to hold must give the reason that the annual assessment work has not been performed or evidence of certain geological, geochemical, or geophysical surveys has not been filed. There are additional required statements that would not be made simply with the filing of the notice of location. Therefore, the filing of the notice of location does not suffice to meet the requirements for the notice of intention to hold. See generally Robert W. Hansen, 46 IBLA 93 (1980).

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.

Joan B. Thompson
Administrative Judge

I concur:

James L. Burski
Administrative Judge

ADMINISTRATIVE JUDGE FISHMAN CONCURRING SPECIALLY:

There is no question but that 43 U.S.C. § 1744(a) (1976), embodying section 314(a) of FLPMA, and 43 CFR 3833.2-1(a), require that a claimant for a mining claim, located on or prior to October 21, 1976, must file no later than October 22, 1979, with BLM evidence of assessment work or a notice of intention to hold the claim.

In the case at bar, appellants filed with BLM on October 22, 1979, copies of the mining claim location notices as required by section 314(b) of FLPMA.

Section 314(c) of FLPMA and 43 CFR 3833.4(a) mandate that failure to file timely evidence of assessment work or notice of intention to hold the mining claims "shall be deemed conclusively to constitute an abandonment of the mining claim."

In essence, both the statute and regulation raise a conclusive presumption of abandonment for the failure to file the required documents timely.

Generally, a presumption may be defined as a rule of law that attaches definite probative value to specific facts or draws a particular inference as to the existence of one fact, not actually known, arising from its usual connection with other particular facts that are known or proved. A presumption should not be construed or defined in such a manner as to extend its application beyond the realm of reasonable probability or certitude, except possibly where, as here, the law creates a conclusive presumption of law.

Such conclusive presumptions rest upon grounds of expediency or public policy so compelling in character as to override the fundamental requirement that questions of fact must be resolved in accordance with, and must be governed by, the proof. 29 Am. Jur. 2d, Evidence §§ 161, 164 (1967).

The Supreme Court in Heiner v. Donnan, 285 U.S. 312, 328-329, 330 (1932), held invalid a statutory conclusive presumption that gifts made within 2 years prior to the death of the donor were made in contemplation of death, stating in part:

The government makes the point that the conclusive presumption created by the statute is a rule of substantive law, and, regarded as such, should be upheld; and decisions tending to support that view are cited. The earlier revenue acts created a prima facie presumption, which was made irrebuttable by the later act of 1926. A rebuttable presumption clearly is a rule of evidence which has the effect of shifting the burden of proof, Mobile, J. & K. C. R. Co. v. Turnipseed, 219 U.S. 35, 43; and it is hard to see how a statutory rebuttable presumption is turned from a rule of

evidence into a rule of substantive law as the result of a latter statute making it conclusive. In both cases it is a substitute for proof; in the one open to challenge and disproof, and in the other conclusive. However, whether the latter presumption be treated as a rule of evidence or of substantive law, it constitutes an attempt, by legislative fiat, to enact into existence a fact which here does not, and cannot be made to, exist in actuality, and the result is the same, unless we are ready to overrule the Schlesinger case, as we are not; for that case dealt with a conclusive presumption and the court held it invalid without regard to the question of its technical characterization. This court has held more than once that a statute creating a presumption which operates to deny a fair opportunity to rebut it violates the due process clause of the Fourteenth Amendment. For example, Bailey v. Alabama, 219 U.S. 219, 238 et seq.; Manley v. Georgia, 279 U.S. 1, 5-6. "It is apparent," this court said in the Bailey case (p. 239) "that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions."

If a legislative body is without power to enact as a rule of evidence a statute denying a litigant the right to prove the facts of his case, certainly the power cannot be made to emerge by putting the enactment in the guise of a rule of substantive law.

* * * * *

The presumption here excludes consideration of every fact and circumstance tending to show the real motive of the donor. The young man in abounding health, bereft of life by a stroke of lightning within two years after making a gift, is conclusively presumed to have acted under the inducement of the thought of death, equally with the old and ailing who already stands in the shadow of inevitable end.

The Supreme Court repeatedly has held that statutes or rules which create arbitrary conclusive presumptions which preclude the offering of proof to the contrary, are irrational and violative of due process. Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974) (arbitrary termination provisions of maternity rules); U.S. Dept. of Agriculture v. Murry, 413 U.S. 508 (1973) (conclusive presumption that child claimed as tax dependent in previous year is not now indigent); Vlandis v. Kline, 412 U.S. 441 (1973) (conclusive presumption that a married person, nonresident of Connecticut, at time of application for admission to State university remains a nonresident as long as he is a student in Connecticut or a single person whose legal address was outside the State at that time or at some point during the preceding year

remains a nonresident for as long as he is a student there); Stanley v. Illinois, 405 U.S. 645 (1972) (conclusive presumption that unmarried fathers are unsuitable and neglectful parents). See generally 27 Okla. L. Rev. 151 (1974); 6 Conn. L. Rev. 725 (1974); 47 U. Colo. L. Rev. 653 (1976).

Despite the foregoing it is well settled that the Board of Land Appeals has no authority to disregard the terms of a statute, see Masonic Homes of Calif., 78 I.D. 312, 316 (1971), and until an act is judicially held to be unconstitutional, it is our duty to administer the law as written. Solicitor's Opinion, 53 I.D. 427 (1931).

Similarly, the Board has recognized its lack of authority to declare a Secretary's regulation invalid. Tucker and Snyder Exploration Co., 43 IBLA 235; Donald E. Jordan, 35 IBLA 290, 295 (1978).

In view of the foregoing limitations on the Board's authority, I am constrained to concur in the majority opinion.

Frederick Fishman
Administrative Judge

