

UNITED STATES
v.
MARY E. GRAY

IBLA 79-314

Decided September 30, 1980

Appeal from decision of Administrative Law Judge E. Kendall Clarke, declaring placer mining claims null and void. OR-07109 and OR-07110.

Affirmed.

1. Contests and Protests: Generally--Mining Claims: Contests--Mining Claims: Hearings--Rules of Practice: Government Contests--Rules of Practice: Hearings

The procedure followed by the Department of the Interior in the initiation of mining contest cases is in compliance with the due process clause of the United States Constitution and the Administrative Procedure Act, 5 U.S.C. § 551 (1976).

2. Mining Claims: Hearings--Rules of Practice: Evidence--Rules of Practice: Hearings

To warrant a further hearing in a mining claim contest, based upon asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Evidence of a past discovery is not sufficient by itself to indicate that a different result might now be obtained.

APPEARANCES: James A. Wickre, Esq., Medford, Oregon, for the appellant; Lawrence E. Cox, Esq., Office of the Solicitor, Portland, Oregon, for the Government.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Mary E. Gray has appealed from a decision of Administrative Law Judge E. Kendall Clarke, dated March 12, 1979, declaring her Prospect and Viola placer mining claims null and void for failure to prove the discovery of a valuable mineral deposit. The claims are situated, respectively, in the E 1/2 SE 1/4 NE 1/4 sec. 3, T. 34 S., R. 7 W., Willamette meridian and the E 1/2 NE 1/4 SE 1/4 sec. 3, T. 34 S., R. 7 W., Willamette meridian, Josephine County, Oregon.

These proceedings were initiated by contest complaints filed by the Bureau of Land Management (BLM) on August 11, 1977, charging:

a. Valuable minerals were not found within the limits of the claim so as to constitute a valid discovery within the meaning of the mining laws of the United States as of July 23, 1955.

b. Valuable minerals have not been found within the limits of the claim so as to constitute a valid discovery within the meaning of the mining laws.

Appellant responded to the charges on September 9, 1977, and a hearing was held on March 17, 1978, before Administrative Law Judge Clarke.

In her statement of reasons for appeal, appellant contends that she was given inadequate notice of the nature of the hearing, in violation of the due process clause of the United States Constitution and section 554(b)(1), (2), and (3) of the Administrative Procedure Act (APA), 5 U.S.C. § 551 (1976). Furthermore, she contends that the hearing should be reopened so that she might introduce two mineral reports prepared by Government mineral examiner H. F. Susie as to the subject claims and dated February 25, 1960, and March 29, 1960, which are stated to have come into her possession subsequent to the hearing.

[1] We hold that appellant's contention that she was given inadequate notice of the nature of the hearing is without merit. The contest complaints afforded her sufficient notice of the material issues involved. Her response was:

You state no Gold was found but at no time have you furnished any assay results to prove this. also the samples were not taken as they should to good mining testing * * *. Also I have the report of my * * * claims from a group of Engineers that was taken a number of years ago.

This seems to indicate an awareness of the matter in dispute. In any case, the contest procedures employed by BLM in this case fully comport with the due process clause of the U.S. Constitution and the APA, *supra*. See Pence v. Andrus, 586 F.2d 733 (9th Cir. 1978); United States v. Stevens, 14 IBLA 380, 81 I.D. 83 (1974).

[2] Furthermore, evidentiary submissions made on appeal will only be considered for the limited purpose of determining whether a further hearing should be granted. United States v. Mattox, 36 IBLA 171 (1978). Generally, to warrant a further hearing where the question of discovery is at issue, an appellant must make an evidentiary tender of proof of the discovery. United States v. Mattox, *supra*. Appellant has not offered proof that a sufficient quantity of valuable ore exists. The proffered mineral reports concluded that each of the subject claims had a valid discovery, based on single samples taken on November 22, 1958, and subsequently assayed. Appellant has offered nothing to suggest that a valid discovery existed on the claims at the time of the hearing into their validity. Evidence of a past discovery is not sufficient to prove the present existence of a valuable mineral deposit, because of the possibility of exhaustion of the deposit and changing economic conditions. United States v. Bechthold, 25 IBLA 77 (1976). Accordingly, we have been shown no reason to indicate that the Administrative Law Judge might rule differently should we grant an additional hearing.

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.

Joseph W. Goss
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Frederick Fishman
Administrative Judge

