

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying petition for temporary deferment of annual assessment work on JM #51 placer mining claim W-72337.

Set aside and remanded.

1. Mining Claims: Generally--Mining Claims: Assessment Work

In order to obtain a temporary deferment of assessment work, a claimant must file a petition for deferment with the authorized officer of the proper office in accordance with 43 CFR 3852.2, and if the petition is based on a "legal impediment" which interdicts the claimant from access to the claim, the complete details of the impediment must be set out with the application. Where the application is deficient on its face for a failure to provide such details, the claimant should be given the opportunity to provide the necessary information to cure the deficiency.

APPEARANCES: A. J. Maurer, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

A. J. Maurer, Jr., has appealed from a January 7, 1981, decision of the Wyoming State Office, Bureau of Land Management (BLM), denying his petition for temporary deferment of assessment work on the JM #51 placer mining claim, located October 30, 1973, in the NE 1/4 NE 1/4 of sec. 33, T. 48 N., R. 65 W., sixth principal meridian, Wyoming.

Appellant's petition was filed August 28, 1980, for the assessment year beginning September 1, 1979. The petition alleged:

This petition is made pursuant to the Act of June 21, 1949 (63 Stat. 214; 30 U.S.C. 28 b-c), providing for the temporary deferment of annual assessment work on mining claim

held by location in the United States due to denial of access, and due to certain unavoidable contingencies and legal impediments, specifically set forth hereafter, existing and affecting the right of the locator to enter upon the surface and perform assessment work on the claim described herein.

Petition is based on the surface owner's denial of entry until a surface agreement has been executed by all interested parties and is the basis for the relief to petitioner upon petition, pursuant to Title 43 U.S.C. Subpart 3852, Sections 3852.1 and 3852.2.

In addition, appellant attached to his petition a copy of an affidavit entitled "Public Notice," recorded with the Weston County Register of Deeds, attesting to the surface owner's denial of entry. Appellant's letter transmitting the petition to BLM specifically emphasized, "Please advise if anything additional is required." BLM did not advise further until it issued its decision of January 7, 1981, denying deferment citing 43 CFR 3852 and stating:

Petitions for Deferment of Assessment must include evidence showing that the mining claimant has taken, or is taking, legal action to secure access to his claim, or evidence showing that access to his claim has been interdicted. No such evidence was submitted. Accordingly, your Petition for Temporary Deferment of Assessment Work for mining claim JM #51, is hereby denied.

Appellant has appealed this denial explaining that in previous years he has obtained access to the claim from the previous operator and part surface owner, Virgil Cordingly. However, this year he was informed that Gary Lee Cordingly was now the operator and that he would have to obtain Gary Cordingly's permission to enter the claim. He contends that negotiations with Gary Cordingly, beginning in May of 1980, led to a draft agreement dated September 3, 1980, regarding the right-of-way and surface damage compensation. He submits a copy of that draft agreement with his appeal which he believes was never executed by Cordingly because the property was about to be sold. In support of this theory, appellant submits a copy of a warranty deed, dated December 10, 1980, which shows a conveyance of lands including the subject claim from the Cordinglys to Kenneth and Fern Blakeman.

[1] The regulation governing petitions for deferment of assessment work, 43 CFR 3852.2, provides:

(a) In order to obtain temporary deferment, the claimant must file with the authorized officer of the proper office, a petition in duplicate requesting such deferment. No particular form of petition is required, but the applicant must attach to one copy thereof a copy of the

notice to the public required by the act which shows that it has been filed or recorded in the office in which the notices or certificates of location were filed or recorded. The petition and duplicate should be signed by at least one of the owners of each of the locations involved, shall give the names of the claims, dates of location, and the date of the beginning of the one-year period for which deferment is requested. Each petition shall be accompanied by a \$10 non-refundable service charge.

(b) If the petition is based upon the denial of a right-of-way, it must state the nature and ownership of the land or claim thereto over which it is necessary to obtain a right-of-way in order to reach the surrounded claims, and the land description thereof by legal subdivisions, if the land is surveyed, and give full details as to why present use of the right-of-way is denied or prevent and as to the steps which have been taken to acquire the right to use it. The petition should state whether any other right-of-way is available and if so, give reasons why it is not feasible or desirable to use that right-of-way.

(c) If the petition is based on other legal impediments, they must be set out and their effect described in detail.

Appellant seeks a deferment of assessment work based on a denial of access to his claim by the surface owners and because of delays in making the necessary arrangements for such access within the required period of the assessment year. The evidence presented with this appeal shows that appellant was negotiating for access, but was prevented from entry on his claim and was unable to conclude a satisfactory arrangement with the Cordinglys before the surface was conveyed to another owner. It appears that during this period appellant was making a good faith attempt to gain access to the claim to perform the assessment work. This is the type of situation which this Board has determined presents the necessary "legal impediment" to qualify for a temporary deferment of assessment work in accordance with the regulation. A. J. Maurer, Jr., 36 IBLA 4 (1978); Oliver Reese, 34 IBLA 103 (1978).

The State Office found appellant's application defective because of his failure to provide the full details of the "legal impediment" with the application. Although the application was deficient on its face for lack of complete information as required by 43 CFR 3852.2(c), we note that appellant had asked BLM if additional information was needed with the application. He did not receive a response to that request. In these circumstances the State Office should have informed appellant of the deficiency in the application and given him the opportunity to provide the necessary information to cure the deficiency. There appears no reason that such opportunity

was not afforded appellant. We, therefore, remand this case to the State Office for further consideration of the documentation appellant has presented for the first time with this appeal. See Andrew L. Freese, 50 IBLA 26, 30 (1980).

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 set aside and the case is remanded to the Wyoming State Office, BLM, for further action consistent herewith.

Gail M. Frazier
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

