

UNITED STATES
v.
ANTON V. EVALT

IBLA 82-141

Decided March 4, 1982

Appeal from decisions of the Oregon State Office, Bureau of Land Management, declaring mining claim and millsite null and void. OR MC 34605 and OR MC 37409.

Affirmed.

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

A contestee in Government contests challenging the validity of his mining claim and millsite must file answers to the complaints within 30 days of service, failing which BLM properly takes the truth of the allegation in the complaints as admitted without a hearing.

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

New evidence offered on appeal after BLM has rendered a determination that a mining claim is null and void, following the contestee's failure to answer the contest complaint, may be considered by the Board only to determine if BLM's ruling is so patently erroneous that there should be further inquiry into the facts. Appellant's unsupported suggestion that there might be rich ore on the claim does not justify further inquiry.

APPEARANCES: Anton V. Evalt, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Anton V. Evalt appeals from the October 29, 1981, decisions of the Oregon State Office, Bureau of Land Management (BLM), which declared the Triple 888 mining claim (OR MC 34605) and the Triple 888 millsite (OR MC 37409) null and void.

BLM issued the contest complaints on June 9, 1981, at the request of the Forest Service. The complaint against the mining claim alleged that minerals had not been found within its limits in sufficient quantity to constitute a valid discovery. The complaint against the millsite alleged that it was not used or occupied either for mining or milling purposes by the proprietor of a vein or lode, or for custom milling.

On June 22, 1981, Evalt, the owner of the mining claim and millsite, signed a return receipt card evincing his receipt by certified mail of both contest complaints. ^{1/} Evalt did not file answers to these complaints.

Accordingly, on October 29, 1981, BLM issued its decisions declaring the mining claim and millsite null and void. It held that since Evalt (and, in the case of the millsite, the other three possible interest holders (see n.1)) had been duly served with the contest complaints but had not answered, it was taking the allegations set out in the complaints as admitted. The complaints alleged that critical requirements essential to maintaining valid mining claims and millsites had not been met. Thus, BLM held since the truth of these alleged failures had been effectively admitted, the mining claim and millsite were properly declared null and void. Evalt appealed.

[1] Under 43 CFR 4.450-6 and 4.451-2, a contestee in a Government contest proceeding challenging the validity of a mining claim must file an answer to the contest complaint within 30 days after service of the complaint. Thus, in order to comply with this regulation, appellant would have had to file answers on or before July 22, 1981. He did not do so.

The consequences of failure to file an answer are set out in 43 CFR 4.450-7(a) and are applied to Government contests by 43 CFR 4.451-2: "If an

^{1/} Anton Evalt is listed as the sole locator of the Triple 888 mining claim on the notice of location for this claim. Accordingly, it was necessary only for BLM to serve him with the contest complaint.

The notice of location for the Triple 888 millsite claim indicates that Anton Evalt is the "owner" of the claim, but lists Ed Otey, Robert Evalt, and Edward Evalt as "backers, investors, and stockholders." Under 43 CFR 3833.5(d), only those owners who have recorded their claims with BLM are considered as parties whose rights are affected by a contest proceeding and who are therefore entitled to receive notice of the contest. Thus, it would appear that BLM's service of notice on Anton Evalt was, by itself, adequate, since he was the self-styled "owner" of the millsite. However, it is unnecessary to consider this question, since BLM also served complaints by certified mail on Ed Otey, Robert Evalt, and Edward Evalt, so that these parties were given ample notice that any ownership interests held by them were being contested. None answered the complaint.

answer is not filed as required, the allegations of the complaint will be taken as admitted by the contestee and the manager will decide the case without a hearing." This provision is also set out in the contest complaint.

The time limit for filing an answer to a contest complaint is mandatory and cannot be waived. Pence v. Andrus, 586 F.2d 733, 741 (9th Cir. 1978); United States v. Seelinger, 46 IBLA 76 (1980). The regulation requiring BLM to take the allegations of the complaint as admitted has also been consistently construed as mandatory. Sainberg v. Morton, 363 F. Supp. 1259, 1263 (D. Ariz. 1973); United States v. Soren, 47 IBLA 226 (1980), and cases cited therein. Thus, BLM properly took as admitted the truth of the allegations in the contest complaint. Having done so, its conclusion that the claim and millsite were null and void was compelled, since it is axiomatic both that a valid mining claim cannot exist absent a valid discovery, and that a valid millsite cannot exist if not used or occupied for mining or milling. 2/

[2] Even in the absence of contestee's procedural failure, supra, were we to consider this appeal on its merits no relief would be warranted. Appellant's statement of reasons consists of various allegations of harassment by unnamed persons. He suggests that there may be "richer gold, copper, and silver ore" on the mining claim, but that "it had been covered up." New evidence offered on appeal after BLM has rendered a determination that a mining claim is null and void may be considered by the Board only to determine if the ruling below is so patently erroneous that there should be further inquiry into the facts. See United States v. Franklin, 45 IBLA 54, 58 (1980). The unsupported suggestion that there might be rich ore buried somewhere on the claim does not demonstrate a need to reopen the factual inquiry.

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 affirmed.

Bernard V. Parrette
Chief Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Edward W. Stuebing
Administrative Judge

2/ While it is not necessary to consider it, because of the admission arising from appellant's failure to answer, we note that the record on which BLM made its decision contains a mineral examination report dated

Dec. 12, 1980, which supports the truth of the allegations in the contest complaint.

