

ROGER STANLEY

IBLA 82-809

Decided June 23, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 41068 through I MC 41077.

Affirmed.

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

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1 in the proper BLM office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner. The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Roger Stanley, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Roger Stanley appeals the Idaho State Office, Bureau of Land Management (BLM), decision of April 27, 1982, which declared the unpatented Stanley Boys, Stanley Boys Nos. 1 through 5, Quar-Joe, and Quar-Joe Extension Nos. 1 through 3 lode mining claims, I MC 41068 through I MC 41077, abandoned and void because the affidavit of annual assessment work for 1981 was received January 6, 1982, contrary to the regulations in 43 CFR 3833.2-1, and the requirements of section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

Appellant states he has faithfully done the assessment work on his claims for more than 27 years and has recorded the evidence in Shoshone County, Idaho. He states he was and is confused by the language in the regulations of 43 CFR Part 3833, but tried to comply. He thought the 1981 proof of labor had been mailed timely so as to reach BLM by December 30, 1981.

The envelope containing the affidavit of assessment work was addressed simply: "BLM Office, Boise, Idaho, 83720." The envelope bears a postmark of December 28, 1981, at Spokane, Washington, with additional postmarks of December 30 and 31, 1981, at Boise, Idaho. The zip code was changed to 83724, presumably by the Postal Service in Boise. The correct mailing address for BLM is "Idaho State Office, Bureau of Land Management, Federal Building, Box 042, 550 West Fort Street, Boise, Idaho 83724."

Although it appears the documents were timely mailed, but with an incomplete address on the envelope, the regulations define "file" to mean "being received and date-stamped by the proper BLM office. 43 CFR 3833.1-2(a). Thus, even though the documents were mailed and the incomplete address prevented the Postal Service from delivering them to the BLM office timely, that does not excuse appellant's failure to comply with the cited regulations. Edna L. Patterson, 64 IBLA 316 (1982); Magdalene Pickering Franklin, 57 IBLA 244 (1981); Glenn D. Graham, 55 IBLA 39 (1981). The Board has repeatedly held a mining claimant, having chosen the Postal Service as a means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of the filings. Magdalene Pickering Franklin, *supra*; Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mail does not constitute filing. 43 CFR 1821.2-2(f).

This Board has no authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

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.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

