

HOWARD E. THOMPSON

IBLA 82-817

Decided June 23, 1982

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. CA MC 47792.

Affirmed.

1. Administrative Procedure: Burden of Proof -- Evidence: Burden of Proof -- Evidence: Presumptions -- Evidence: Sufficiency -- Mining Claims: Abandonment

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. Where BLM states that it did not receive certain instruments, it is the responsibility of the appellant to show that they were, in fact, received.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

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, the conclusive presumption 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: Howard E. Thompson, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Howard E. Thompson appeals the April 19, 1982, decision of the California State Office, Bureau of Land Management (BLM), which declared the unpatented Arctic Extension placer mining claim, CA MC 47792, abandoned and void because no proof of labor or notice of intention to hold the claim was filed with BLM during 1980, as required by 43 CFR 3833.2-1, and section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

Appellant asserts that he transmitted a proof of labor for the Arctic Extension placer mining claim, CA MC 47792, and for the Arctic Tunnel Site, CA MC 47793, in an envelope received by BLM September 23, 1980, as evidenced by a certified mail return receipt card. He states the proof of labor did not have any identifying serial numbers for the Arctic claims, and he did not receive an acknowledgment for the proof of labor for the Arctic claims as he did for the Fritz Trimpen claim, CA MC 57689, for which a proof of labor was in the same envelope. A copy of the proof of labor for the Arctic claims was included with the appeal, and shows a recording date of September 2, 1980, in the records of Sierra County, California.

BLM states that the envelope from Thompson received September 23, 1980, contained only documents relating to the Fritz Trimpen claim, CA MC 57689, and that the letter from appellant in the envelope referred only to the Fritz Trimpen claim.

[1] A presumption of regularity supports the official acts of public officers in the proper discharge of their duties. *See, e.g., Legille v. Dann*, 544 F.2d 1 (D.C. Cir. 1976); *Bernard S. Storper*, 60 IBLA 67 (1981); *Phillips Petroleum Co.*, 38 IBLA 344 (1979). Thus, where, after a thorough search, BLM states it did not receive the instrument, the burden is on the appellant to show that the instrument was, in fact, received timely by BLM. *See H. S. Rademacher*, 58 IBLA 152, 88 I.D. 873 (1981). Appellant's unsupported statement that he did transmit the 1980 proof of labor to BLM does not overcome the presumption of regularity. It is the receipt of the instrument which is critical, and a document is not filed until it is received by BLM. *See* 43 CFR 1821.2-2(f).

[2] Section 314 of FLPMA requires the owner of an unpatented mining claim to file with BLM evidence of the assessment work performed on the claim or a notice of intention to hold the claim prior to December 31 of each calendar year. Failure to comply with the recordation requirements of FLPMA is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. *Lawrence Paul*, 63 IBLA 275 (1982); *Lynn Keith*, 53 IBLA 192, 88 I.D. 369 (1981); 43 U.S.C. § 1744(c) (1976). Congress imposed that consequence in enacting FLPMA. The responsibility for complying with the recordation requirements of FLPMA rests with appellant, and this Board has no authority to excuse failure to comply with the statutory requirements of recordation or to afford any relief from the statutory consequences. *Lynn Keith, supra*.

Where there is no evidence to show that BLM received the 1980 proof of labor for the Arctic Extension placer mining claim, BLM properly declared the claim abandoned and void pursuant to FLPMA and 43 CFR 3833.4(a).

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.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

