

UNITED STATES
v.
GARY J. MURDOCK

IBLA 82-152

Decided July 9, 1982

Appeal from decision of Administrative Law Judge Robert W. Mesch declaring the Anniversary placer mining claim invalid. MT 46298.

Affirmed.

1. Mining Claims: Determination of Validity -- Mining Claims: Discovery: Generally

A mining claimant has not made a discovery of a valuable mineral deposit where further exploration is necessary to determine whether there is a reasonable prospect of success in developing a valuable mine.

2. Mining Claims: Contests -- Mining Claims: Determination of Validity

Allegations by a mining claimant that the Government mineral examiner used improper sampling procedures will be given little weight where the claimant introduces no probative evidence establishing that the samples taken by the Government mineral examiner failed to accurately represent the mineral value of the land.

3. Mining Claims: Contests -- Mining Claims: Determination of Validity: Mining Claims: Hearings

If, after the Government has established a prima facie case of nondiscovery, evidence presented by a mining claimant in a Government contest fails to show that there has been discovery of a valuable

mineral deposit, the claim is properly declared invalid regardless of any defects in the Government's case.

4. Mining Claims: Determination of Validity -- Mining Claims:
Discovery: Generally

The standard of discovery applied in a Government contest is far stricter than that applied in a contest between rival claimants. The mere presence of slight amounts of gold on a placer mining claim does not satisfy the requirement of a discovery of a valuable mineral deposit under the mining laws, even if the showings would justify further exploration.

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

To warrant a further hearing in a mining claim contest based upon an asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Vague and unsupported assertions of mineralization do not establish a basis for reopening the hearing. Because under 30 U.S.C. § 23 (1976) a mining claimant must make a discovery of a valuable mineral deposit prior to the location of the claim, it is presumed that when the validity of his claim is challenged, the mining claimant need only come forward with the evidence of discovery which he has already made.

APPEARANCES: Gary J. Murdock, pro se; Lawrence M. Jakub, Esq., Office of the General Counsel, Department of Agriculture, Missoula, Montana, for the United States Forest Service.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Gary J. Murdock has appealed from the October 21, 1981, decision of Administrative Law Judge Robert W. Mesch declaring the Anniversary placer mining claim invalid for lack of discovery of a valuable mineral deposit. The claim is located within the Helena National Forest, Lewis and Clark County, Montana.

[1] A discovery of a valuable mineral deposit is accomplished where "minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine." Castle v. Womble, 19 I.D. 445, 457 (1896), approved in Chrisman v. Miller, 197 U.S. 313, 322 (1905). In his decision, Judge Mesch quoted appellant's testimony that indicated that appellant was still exploring the claim to determine whether or not he could make a living on it. He found the claim invalid on the basis of the well established rule that a mining claimant has not made a discovery of a valuable mineral deposit where further exploration is necessary to determine whether there is a reasonable prospect of success in developing a valuable mine. United States v. Kaycee Bentonite Corp., 64 IBLA 183, 88 I.D. (1982); United States v. Dillman, 36 IBLA 358 (1978). See Chrisman v. Miller, *supra*; Barton v. Morton, 498 F.2d 288 (9th Cir.), *cert. denied*, 419 U.S. 1021 (1974). Having reviewed the record in this case, we are in agreement with Judge Mesch's decision from which we have excerpted the following:

The evidence in this case clearly establishes that a valuable mineral deposit has not as yet been found within the limits of the contested mining claim. At best, the evidence simply shows that the claim might warrant further exploration in an attempt to ascertain whether sufficient placer gold might be found to warrant a mining operation. For example, the mining claimant, the contestee, testified as follows:

Q You have filed a plan of operation with the Forest Service, have you not?

A Yes.

Q And it includes what type of operation? What do you intend, plan to do, on the property?

A To do exploration.

Q And in what manner?

A With a backhoe.

Q You feel that you have prospected it enough now to be able to start doing exploration work?

A Yes.

JUDGE MESCH: What do you mean by exploration work?

CONTESTEE MURDOCK: To develop the finds, the areas that I found gold, more extensively.

JUDGE MESCH: In an attempt to find out what the volume of material is that contains the gold or what?

CONTESTEE MURDOCK: In an attempt to find out if it is richer.

Q (By Mr. Romine) I assume what you want to find out [is whether it] would justify spending money to operate it.

A Yes.

Q You are still in this exploration stage?

A Yes. (Tr. 170, 171)

* * * * *

Q And I assume that the reason for that [further exploration with a backhoe] is to make a further determination as to the values so that you know whether or not you feel you can go into an operation that you can make a living on this claim; is that correct?

A Yes. (Tr. 182)

[2, 3] Appellant claims that Judge Mesch improperly construed the evidence presented to him at the hearing and additionally failed to make findings of fact as to certain crucial factual questions which, appellant contends, entitles him to a new hearing. Appellant contends that the Forest Service mineral examiners failed to sample the area from which he had been recovering minerals. This particular spot was in the bed of an intermittent stream, and the Forest Service mineral examiners chose to sample an undisturbed area in the bed several feet away. Later, however, the Forest Service examiners sampled the site and found no colors of gold or other evidence of the existence of a valuable mineral deposit (Tr. 195-96, 201). Although the claimant makes detailed objections to the procedures and methods used by the mineral examiners in sampling the claim, he has offered no probative evidence tending to show that the samples taken by the Government failed to adequately represent the mineral value of the land. ^{1/} Accordingly, we find that appellant's allegations that the examiners used improper procedures can be given

^{1/} Although at the hearing appellant produced a vial which was said to contain gold, the material had not been tested nor was it introduced into evidence. There was not other testimony about where this material came from, or how much material had to be processed in order to derive the sample contained in the vial.

little weight and are insufficient to overcome the Government's case. See generally United States v. Timm, 36 IBLA 316, 318 (1978). Furthermore, as Judge Mesch's decision demonstrates, appellant's testimony itself provides sufficient basis for finding that a valuable mineral deposit has not yet been discovered. If evidence presented by a claimant shows that there has been no discovery, the claim is properly declared invalid, regardless of any defects in the Government's case. United States v. Taylor, 19 IBLA 9, 82 I.D. 68 (1975).

[4] No one disputes that "colors" of gold have been found in examining the claim. However, appellant is mistaken in his belief that this is sufficient to satisfy the requirement of a discovery in a Government mining claim contest. As authority for this proposition, appellant cites 1 Rocky Mountain Mineral Law Foundation, American Law of Mining, § 460 (1981), and Lange v. Robinson, 148 F. 799 (9th Cir. 1906). Although those authorities state that there may be a valid discovery on a gold placer claim based on the finding of colors, the authorities cited are clearly referring to the standard of discovery applicable in a proceeding between rival mining claimants, not a Government contest. Those authorities make clear that the standard in a Government contest is far stricter. See also Chrisman v. Miller, *supra*. Thus, the mere presence of slight amounts of gold on a placer mining claim does not satisfy the requirement of a discovery of a valuable mineral deposit under the mining laws even if the showings would justify further exploration. See United States v. Zuber, 13 IBLA 193 (1973); see also Barton v. Morton, *supra*; Converse v. Udall, 399 F.2d 616 (9th Cir. 1968), *cert. denied*, 393 U.S. 1025 (1969).

[5] Appellant has asked for a new hearing to determine unresolved factual questions, stating that subsequent research has brought to light the exact discovery point of the original locator in 1955, which discovery area has not yet been tested. However, appellant has made no offer of proof that sufficient gold has been found on the claim to constitute a discovery. In United States v. Gassaway, 43 IBLA 382, 384 (1979), we noted that under 30 U.S.C. § 23 (1976) a mining claimant is required to make a discovery prior to the location of his claim so that when his claim is challenged in a Government contest, it is presumed that the claimant need only come forward with the evidence of the discovery which he has already made. Furthermore, to warrant a further hearing in mining claim contests based on an asserted lack of discovery, an appellant must make an evidentiary offer of proof of discovery. Vague and unsupported assertions of mineralization do not establish a basis for reopening a contest hearing. United States v. Speckert, 55 IBLA 340 (1981).

fn. 1 (continued)

Appellant has also submitted an assay report indicating that a sample of concentrate sent to American Smelting and Refining Company contained 0.81 ounces of gold per ton (Contestee's Exh. C). However, there was no indication of how much concentrate was sent for assaying, nor was there any probative evidence indicating how much material had to be processed in order to obtain the concentrate. Thus, this assay report can be given little probative weight.

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, and appellant's request for a new hearing is denied.

Edward W. Stuebing
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge.

