

FAWN RUPP

IBLA 82-871

Decided July 12, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 45416 through I MC 45428; I MC 46129 through I MC 46138.

Affirmed.

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

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed, and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was delivered to show that it was, in fact, timely received by BLM.

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

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Dec. 30 of the calendar year following the year in which the claim was located, and prior to Dec. 31 of every year thereafter. This requirement is mandatory, and failure to comply is

deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

3. 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: D. H. Adair, agent, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Fawn Rupp appeals the April 26, 1982, decision of the Idaho State Office, Bureau of Land Management (BLM), which declared the unpatented Golden Dream Nos. 1 through 13, and Radiant Hope Nos. 23, 24, 30 through 35, 43, and 44 lode mining claims, I MC 45416 through I MC 45428, and I MC 46129 through I MC 46138, abandoned and void because the owner of the claims did not file with BLM prior to December 31, 1980, evidence of assessment work for Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

The claims were located during September, October, and November 1979. Copies of the notices of location were filed with BLM December 19, 1979, and January 16, 1980.

Appellant asserts that the required assessment work was done on the claims in 1980 and in 1981, and that evidence was duly recorded each year in the Idaho County, Idaho, records. He cannot state with certainty or prove that he mailed the 1980 proof of labor to BLM, but he thinks that he did so after recording it in Idaho County. He states that BLM sent him a receipt in 1981 for the proof of labor that year, and he thinks he may have received a similar receipt in 1980, but he cannot find it. As the 1981 proof of labor cannot now be found by BLM, appellant contends the 1980 proof of labor was received by BLM and later lost or misplaced. Appellant states it would be grossly unfair to invalidate the claims as a consequence of some folly which occurred within BLM itself.

[1] Various presumptions come into play when an appellant alleges transmittal of an instrument, but BLM has no record of its receipt. On one

hand, there is a presumption of regularity which 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 (1976). On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed, and deposited in an appropriate receptacle, is duly delivered. See, e.g., Donald E. Jordan, 35 IBLA 290 (1978). When these two presumptions have come into conflict, the Board generally has accorded greater weight to the former. See David F. Owen, 31 IBLA 24 (1977). We believe that public policy considerations dictate that greater weight be given to the presumption of regularity over that accorded the presumption that mail, duly addressed, stamped, and deposited, is delivered.

Thus, where after diligent and 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 statement that he thought he transmitted the 1980 proof of labor to BLM does not overcome the presumption of regularity by the BLM employees. It is the receipt of the instrument which is critical.

The regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even if loss of the envelope, containing evidence of assessment work and addressed to BLM, was caused by the Postal Service, that fact would not excuse appellant's failure to comply with the cited regulations. Cf. Regina McMahan, 56 IBLA 372 (1981); Everett Yount, 46 IBLA 74 (1980). The Board has held repeatedly that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequence of loss or untimely delivery of his filings. Don Chris A. Coyne, 52 IBLA 1 (1981). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

[2] Section 314 of FLPMA requires the owner of unpatented mining claims located after October 21, 1976, in addition to filing with BLM a copy of the official record of the notice of location within 90 days after the claim was located, to file with BLM evidence of the assessment work performed on the claim or a notice of intention to hold the claim before December 31 of each calendar year after the year in which the claim was located. The statute also provides that failure to file such instruments within the time periods prescribed shall be deemed conclusively to constitute an abandonment of the mining claim by the owner. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). As the requirement to file is mandatory, not discretionary, failure to comply must be conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1981).

[3] With respect to the conclusive presumption of abandonment and appellant's argument of the gross unfairness of such action, the Board, in Lynn Keith, *supra*, stated:

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, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). 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 of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

53 IBLA at 196, 88 I.D. at 371.

BLM was under no obligation to notify appellant of the need for a 1980 filing. The fact that it did so in 1981 was merely a courtesy which appellant had no right to expect. Those who deal with the Government are presumed to have knowledge of the law and the regulations duly promulgated pursuant thereto. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 331 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978). The responsibility for complying with the recordation requirements rested with appellant. When BLM could not find any evidence of receipt of the requisite proofs of labor for 1980 on or before December 30, 1980, it properly declared the claims abandoned.

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

Anne Poindexter Lewis
Administrative Judge

