

STEVE KOSANKE

IBLA 81-672

Decided July 27, 1982

Appeal from decision of Utah State Office, Bureau of Land Management, declaring mining claims abandoned and void. U MC 3189 through U MC 3198.

Affirmed.

1. 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 an unpatented mining claim located after Oct. 21, 1976, must file a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed, for whatever reason, the claim is conclusively presumed to be abandoned.

APPEARANCES: Steve Kosanke, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Steve Kosanke has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated April 24, 1981, declaring the Tab #1 through Tab #10, U MC 3189 through U MC 3198, mining claims abandoned and void for failure to file evidence of annual assessment work or notices of intention to hold the claims for the 1977 or 1978 assessment years, pursuant to section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976).

Appellant's mining claims were located December 10, 1976, and filed for recordation with BLM on February 28, 1977. The record contains evidence of annual assessment work timely filed with BLM for the 1979 and 1980 calendar years, but neither evidence of annual assessment work nor notices of intention to hold the claims for the calendar year 1977 or 1978.

On appeal, appellant submits an "Affidavit of Labor and Improvement" for the 1978 assessment year. The affidavit, dated August 30, 1978, indicates that it was recorded with the county recorder's office on September 25, 1978. Appellant also submits a cover letter directed to the BLM state office, dated November 5, 1977, which states that it is intended to be a notice of intent to hold the claims. The letter further states: "I have complied with the federal and state laws pertaining to annual assessment work for the assessment year 1977 even though by law, none was required as I staked these claims less than a year ago." Appellant contends that these documents were originally on file with the state office and that witnesses "will testify that the Tab file was complete as to all filings."

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), provides, in relevant part, that the owner of an unpatented mining claim located after October 21, 1976 "shall, prior to December 31 of each year following the calendar year in which the said claim was located," file with BLM either evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the claim. See 43 CFR 3833.2-1(c). Failure to file timely shall be deemed conclusively to constitute an abandonment of the mining claim and it shall be declared void. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a); Lynn Day, 63 IBLA 70 (1982).

Under section 314(a) of FLPMA, appellant was required to file either evidence of annual assessment work or notices of intention to hold his claims prior to December 31 of each calendar year following the calendar year in which the claims were located, i.e., 1976. Accordingly, appellant was required to file in calendar years 1977 and 1978. 1/ Appellant asserts that he did file timely and submits copies of the relevant documents. He states that witnesses will testify as to the completeness of his filings.

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). Accordingly, it is presumed that, where BLM has no record of the

1/ Appellant is correct when he states that the mining law does not require performance of assessment work until the assessment year commencing on the first day of September succeeding the date of location of the claims. 30 U.S.C. § 28 (1976). Thus, appellant was not required to perform assessment work until the assessment year commencing on September 1, 1977, and running to September 1, 1978. However, this does not eliminate the necessity for compliance with section 314 of FLPMA, requiring the filing of either evidence of annual assessment work or notices of intention to hold the mining claims.

receipt of a document, it has not been lost or misplaced by BLM, but, rather, was never received by BLM. The burden is on one challenging that presumption to overcome it by a preponderance of the evidence.

Appellant's unsupported statements that he filed a notice of intention to hold the claims in 1977 and evidence of annual assessment work in 1978 will not suffice without some evidence that the documents were filed, *i.e.*, received and date stamped. There is no evidence that the documents, which appellant submits on appeal, were ever mailed, or, more importantly, any corroborating evidence that they were received by the BLM state office. See L. E. Garrison, 52 IBLA 131 (1981).

Appellant contends that unnamed witnesses will testify that his filings were "complete." However, at the request of the Board, the BLM State Office has submitted copies of the serial register pages for the Tab # 1 through Tab #10 mining claims. These pages reflect the contemporaneous receipt of various documents in connection with the claims. There is no indication of any filings made in 1977 or 1978 as to either evidence of annual assessment work or notices of intention to hold the claims. In view of this record, we feel no useful purpose would be served by affording appellant an opportunity for a hearing.

As neither evidence of annual assessment work nor notices of intention to hold the claims were filed timely, the conclusive presumption of abandonment attached by operation of law. BLM properly declared the claims abandoned and void. W. A. Shepherd, 65 IBLA 72 (1982). The Board has no authority to excuse noncompliance with the statute or to afford any 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.

James L. Burski
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Bruce R. Harris
Administrative Judge

