

KEITH L. McCANN, JR.

IBLA 83-28

Decided June 18, 1984

Appeal from a decision of the Nevada State Office, Bureau of Land Management, rejecting application for desert land entry N-23165.

Reversed and remanded.

1. Applications and Entries: Generally -- Desert Land Entry: Applications

The failure of a desert land entry applicant to promptly notify the authorizing BLM officer of a change of address does not, in itself, constitute an adequate basis for rejecting the application.

APPEARANCES: Keith L. McCann, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Keith L. McCann, Jr., has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated September 14, 1982, rejecting desert land entry application N-23165. Appellant sought to enter the N 1/2 sec. 21, T. 8 N., R. 61 E., Mount Diablo meridian, Nye County, Nevada.

By decision dated March 1, 1982, appellant was advised that his application was deficient and would be rejected unless the deficiencies were corrected within 90 days of the receipt of the decision. This decision was mailed to appellant at 2112 Voorhees Avenue, Redondo Beach, California, pursuant to a change of address letter submitted by appellant's wife, on his behalf, to the Reno District Office, BLM, on July 8, 1981. Appellant responded to BLM's decision in a timely fashion by letter received and date stamped May 21, 1982. ^{1/}

By notice of June 9, 1982, appellant was informed that his application was being sent to the Ely District Office for reports and recommendations as to the suitability of the land for classification as land available for desert land entry. This form notice was also mailed to the Redondo Beach

^{1/} In fact, this notice was forwarded from Redondo Beach to another address in San Pedro, California.

address. However, the notice was returned to BLM by the U.S. Postal Service marked, "RETURN TO SENDER, NOT DELIVERABLE AS ADDRESSED, UNABLE TO FORWARD." The September 14, 1982, decision followed and stated in part:

By notice of June 9, 1982, you were notified of the status of your desert land application. That notice was returned by the U.S. Post Office as undeliverable. It is the applicant's responsibility to keep this office informed of a current mailing address. Therefore, since your address of record is no longer correct and we have no way to contact you, your application is hereby rejected as being incomplete.

The aforementioned decision was also mailed to appellant's address of record in Redondo Beach. This decision was forwarded to appellant in Huntington Beach, California. Appellant timely filed a notice of appeal.

In his statement of reasons for appeal, appellant asserts that he included in his May 21, 1982, response to BLM, information regarding his change of address.

[1] While a review of the case file does not support appellant's assertion, it is, nevertheless, necessary to reverse BLM's decision. The applicable regulation, 43 CFR 2521.2(b), relating to applications for desert land entries, states, in relevant part: "It is especially important to claimants that upon changing their post-office addresses they promptly notify the authorizing officer of such change, for in case of failure to do so their entries may be canceled upon notice sent to the address of record but not received by them."

The Nevada State Office obviously read this regulation as providing a substantive basis for rejection of an application for a desert land entry. This is not the case. Rather than being a proscriptive regulation which authorizes the imposition of a specified penalty for failure of an applicant to perform a specific act, this regulation is in the nature of a warning, advising the applicant that, should he fail to keep BLM advised of his current address, the application may be rejected for a substantive reason and the applicant may not be timely notified, with the result that the right of appeal will be lost. 2/ It does not, however, provide an independent basis for rejection of a desert land entry application.

In any event, this Board has noted that desert land entry applications should not be rejected for minor or insignificant deficiencies. We have specifically held that no application should be summarily rejected for error unless the error or omission related to information expressly and specifically required to be furnished and is of such significance that it would preclude favorable consideration. William J. Hart, 30 IBLA 138 (1977). While any applicant should, for his own protection, endeavor to keep BLM

2/ It is unnecessary to decide whether the specific language of 43 CFR 2521.2(b) overrides the limitations on the application of constructive service provided in 43 CFR 1810.2(b). See generally L. Lee Horschman, 74 IBLA 360 (1983).

informed of his current address, we cannot say that failure to do so is so substantial as to warrant rejection of the application for that reason, alone.

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 reversed, and the case is remanded to the Nevada State Office for further action consistent with this opinion.

James L. Burski
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

R. W. Mullen
Administrative Judge

