

MILTON E. KUTIL

IBLA 86-1568

Decided October 5, 1988

Appeal from a decision of the Anchorage, Alaska, District Office, Bureau of Land Management, declaring placer mining claim abandoned and void for failure to file proof of labor or notice of intention to hold the claim for 1981. AA-34160.

Reversed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Evidence: Presumptions -- Evidence: Sufficiency -- Mining Claims: Recordation -- Rules of Practice: Evidence

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. A copy of a proof of labor with the BLM serial number marked in handwriting, coupled with a statement that the original and the copy were hand delivered to BLM and a written acknowledgement by a BLM employee that the handwriting is her own, are sufficient evidence to establish that the proof of labor was timely filed at the proper BLM office.

APPEARANCES: Milton E. Kutil, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Milton E. Kutil appeals from a July 17, 1986, decision of the Anchorage, Alaska, District Office, Bureau of Land Management (BLM), declaring placer mining claim, AA-34160, Kutil No. 141B, abandoned and void for failure to file a proof of labor or a notice of intention to hold for 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982).

The claim, located by Kutil on June 28, 1958, is situated within section 28, T. 27 N., R. 12 W., Seward Meridian, Alaska. Kutil filed the location notice with BLM on October 19, 1979. BLM records at the time of

the decision indicated that Kutil filed proof of labor for the mining claim from 1979 through 1985, with the exception of 1981.

Kutil contends on appeal that he did file the 1981 proof of labor with BLM. Kutil enclosed with his statement of reasons for appeal a copy of a 1981 proof of labor for the Kutil No. 141B which he asserts is a copy of the document he hand carried and filed with BLM that year. Kutil notes that although there is no BLM stamp on the document, the document has a handwritten serial number, which, according to Kutil, was written by a BLM employee at the time Kutil filed the original copy of the 1981 proof of labor. He points out that it is the same handwriting as that which marked the serial number on his 1982 affidavit appearing in the casefile. Appellant indicates that the handwriting has been identified as that of a BLM employee. The record contains a signed statement by the employee dated August 6, 1986, reading as follows: "BLM serial Nos. appears [sic] to be written in my handwriting, which would seem to indicate these documents were received in a timely manner."

[1] The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. David A. Gitlitz, 95 IBLA 221, 224 (1987); Mackay Bar Corp., 75 IBLA 57 (1983). When Government files do not indicate that a document was received, a rebuttable presumption exists that administrative officials did not receive the document. Yates Petroleum Corp., 91 IBLA 252, 258 (1986). A mining claimant must show not merely that a document was properly transmitted, but must show that the document was, in fact, actually received. Anglo Resources Inc., 70 IBLA 106, 111 (1983).

In this case, the mining claimant has produced evidence that he delivered the proof of labor to BLM, and that BLM received the document. The copy of the 1981 proof of labor he asserts he hand carried to BLM has a handwritten notation of the BLM serial number on the document which he asserts was written by a BLM employee at the time he filed the original proof of labor. This assertion is corroborated by a statement of a BLM employee, who identifies the handwriting as her own and who concludes the notation indicates the documents were timely received.

In a memorandum to the casefile, a BLM official noted that a review of the personnel records of the Anchorage District Office indicated that the employee involved had not commenced working in the Public Room until July 1982, and that the employee had no recollection of having assisted Public Room personnel prior to that time. Thus, we are faced with a situation in which the employee involved admits that her handwriting on the document in question "would seem to indicate these documents were received in a timely manner," while records of the Department indicate that this supposition might not be correct.

Clearly, at this point in time, the matter cannot be definitively resolved. However, given the harsh result which would obtain should we determine that the proof of labor was not timely received, we believe that

we should err on the side of appellant. In view of appellant's affirmative assertion that the document was timely filed, together with the fact that the document clearly was submitted at some time in the past, though the exact year is a matter of dispute because the document was not date-stamped, we conclude that the document was timely filed within calendar year 1981.

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 reversed.

C. Randall Grant, Jr.  
Administrative Judge

I concur:

James L. Burski  
Administrative Judge

