

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring lode mining claims abandoned and void. A MC 60490 through A MC 60494.

Reversed.

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: Abandonment

An affidavit of labor was timely received by BLM pursuant to 43 CFR 3833.0-5(m) when it was received before Jan. 19, after it had been sent to BLM in an envelope postmarked prior to Dec. 31 of the preceding year.

APPEARANCES: Joe H. Vozza, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Joe H. Vozza has appealed from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated March 3, 1989, declaring the Esperanza Nos. 1 through 5 lode mining claims, A MC 60490 through A MC 60494, abandoned and void for failure to file either evidence of annual assessment work or a notice of intention to hold the claims for the 1988 assessment year on or before December 30, 1988.

On September 5, 1979, notices of location of the subject mining claims were filed for recordation with BLM, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1988). The location notices stated that Vozza and Robert Gomez had relocated the claims on June 17, 1979, within sec. 8, T. 3. S., R. 30 E., Gila and Salt River Meridian, Greenlee County, Arizona. Thereafter, the record indicates that affidavits of labor performed on the claims during 1979 and subsequent assessment years were filed timely each year with BLM, pursuant to section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1988).

The present case arises from the filing of the affidavit of labor for the 1988 assessment year. The record contains a copy of that affidavit of labor performed on the subject mining claims between September 10 and 25,

1988. The affidavit was signed by Vozza on December 30, 1988, and filed with the Greenlee County Recorder on that same date. It was date-stamped as received by BLM on January 6, 1989.

In its March 1989 decision, BLM declared the subject mining claims abandoned and void pursuant to section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1988), because Vozza had failed to file the affidavit of labor for the 1988 assessment year on or before December 30, 1988. Vozza has appealed from that decision.

In his statement of reasons for appeal, appellant explains that:

I have worked for years and I have a tunnel shaft that I have kept up until I hit the hospital for colon cancer. But my sons and brothers did the assessment work and when I got out of the hospital they told me they didn't record them so I went the last day and I sent them to the wrong address, but any way I will appeal and hope that you will consider me. I am pretty old but I still get around pretty good. I will be 75 in May. So please try to help me.

The record confirms that appellant originally mailed his 1988 affidavit of labor to a former address of BLM. Contained therein is an envelope postmarked December 30, 1988, in Clifton, Arizona, which, apparently, was appellant's place of residence. The envelope is addressed to the Arizona State Office at 2400 Valley Bank Center, Phoenix, Arizona 85073, which had formerly been the State Office's address. The envelope also indicates that it was returned to the sender because the forwarding order had expired. The record also indicates that the 1988 affidavit of labor was again mailed to BLM, but this time to the correct address. The record contains an envelope postmarked January 5, 1989, in Clifton, Arizona, and addressed to the Arizona State Office at 3707 N. 7th Street, P.O. Box 16563, Phoenix, Arizona 85011, which was the State Office's correct address. The affidavit of labor was date-stamped as received by BLM on January 6, 1989. BLM does not dispute this sequence of events nor that the envelope postmarked December 30, 1988, contained appellant's affidavit of labor for the 1988 assessment year. We assume, therefore that the affidavit was mailed in the fashion described by appellant. See Richard A. Willer, 101 IBLA 106 (1988); Elizabeth D. Anne, 66 IBLA 126 (1982).

[1] Section 314(a) of FLPMA requires the owner of an unpatented mining claim located after October 21, 1976, to file with BLM "prior to December 31 of each year following the calendar year in which the * * * claim was located" either evidence of annual assessment work or a notice of intention to hold the claim. 43 U.S.C. § 1744(a) (1988); see also 43 CFR 3833.2-2(c). Failure to file either document timely shall, by operation of section 314(c) of FLPMA, "be deemed conclusively to constitute an abandonment of the mining claim." 43 U.S.C. § 1744(c) (1988); see also 43 CFR 3833.4(a). At that point, BLM properly declares the claim abandoned and void. See James R. Tucker, 116 IBLA 222, 223 (1990).

In the present case, appellant was required to file his affidavit of labor for the 1988 assessment year prior to December 31, 1988. A proof of

labor is "timely filed" if it is received and date-stamped by the proper BLM office by January 19 in an envelope bearing a U.S. Postal Service post-mark before December 31. 43 CFR 3833.0-5(m). The record establishes that the 1988 affidavit was received and date-stamped by BLM on January 6, 1989. Furthermore, the affidavit was originally mailed to BLM in an envelope postmarked prior to December 31. On the record before us, we therefore conclude that there has been good faith compliance with the requirements of Departmental regulation 43 CFR 3833.0-5(m).

This interpretation is borne out by the preamble to the final rulemaking which promulgated 43 CFR 3833.0-5(m). The preamble initially explains that the regulation does not change the deadline for filing in the case of evidence of annual assessment work or a notice of intention to hold; rather, it provides, in recognition of delays in mail delivery, that a postmark prior to December 31 "will constitute evidence of filing," but that such filing is "conditioned upon subsequent receipt by [BLM]." 47 FR 56302 (Dec. 15, 1982) (emphasis added).

The rule, thus, is intended to benefit the mining claimant who takes steps to ensure that the required document is filed timely with BLM by placing the document in the mail prior to the deadline, where the document is calculated to be, and in fact is, received by BLM within a reasonable time (20 days) thereafter. The preamble to the regulation also comments that "a claimant who has in good faith complied with the requirements of the statutes should not be penalized if the documents are postmarked on or before December 30th and received within twenty days of December 30th." Id. at 56302. Accord Patrick J. McClain, 109 IBLA 320 (1989), wherein the Board concluded that evidence of annual assessment work was timely filed within the meaning of 43 CFR 3833.0-5(m) where it was received by BLM before January 19 in an envelope postmarked prior to December 31. Pertinent to this case, the McClain envelope was initially received by an incorrect BLM office (the Las Vegas District Office, Nevada) and forwarded to the correct office (the Nevada State Office), where it was received before January 19. In that case, the requirements of 43 CFR 3833.0-5(m) were deemed to have been satisfied. In this case also, we therefore conclude that BLM should properly rely on the December 30 postmark to record the 1988 affidavit as timely received.

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.

Franklin D. Arness
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

