

CLAY WORST

IBLA 94-54

Decided January 21, 1994

Appeal from a decision of the Arizona State Office, Bureau of Land Management, denying exemption from payment of annual rental and deferment of annual assessment work for mining claims A MC 209536 through A MC 209548.

Stay denied; decision affirmed as modified.

1. Mining Claims: Assessment Work--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption--Rules of Practice: Appeals: Stay

To be entitled to a stay of a BLM decision denying exemption from payment of rental fees on mining claims, the claimant was required to show there was a likelihood he would succeed on the merits of his appeal. Because his exemption from payment of rental fees imposed by the Act of Oct. 5, 1992, depended on a showing that he was a small miner holding 10 claims or less, his ownership of 13 claims foreclosed the possibility of success on an appeal.

2. Mining Claims: Generally--Mining Claims: Assessment Work--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

A miner claiming entitlement to exemption from payment of rental fees required by the Act of Oct. 5, 1992, for a group of 13 mining claims because access to the claims in order to perform assessment work had allegedly been denied was not entitled to exemption from such payment when the record showed he was not a small miner as that term is defined by regulations implementing the Act.

APPEARANCES: Clay Worst, Apache Junction, Arizona, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On November 10, 1993, Clay Worst filed a notice of appeal and petition for stay of a September 30, 1993, decision by the Arizona State Office, Bureau of Land Management (BLM), that denied exemption from payment of an annual rental fee imposed on a group of 13 claims numbered A MC 209536 through A MC 209548. Under the Act of October 5, 1992, an annual rental fee of \$100 is required to be paid for each non-mining claim located or held under section 314(b) of the Federal Land Policy and Management

Act of 1976 (FLPMA) 43 U.S.C. § 1744 (1988). The Act makes the rental fee payable in lieu of an annual assessment work requirement established by 30 U.S.C. § 28 (1988). See P.L. 102-381, 106 Stat 1378, 1379 (1992).

To obtain exemption from the statutory rental fee, Worst petitioned BLM for deferment of assessment work pursuant to 30 U.S.C. §§ 28b through 28e (1988), in order to obtain exemption from payment of rental fees under 43 CFR 3833.1-7(e) of a Departmental regulation implementing the 1992 Act. See 58 FR 38188, 38200 (July 15, 1993). He did not, however, petition for a small miner's exemption, See Certification filed Aug. 30, 1993, at 3. On appeal to this Board from the BLM decision denying his deferment application (and, consequently, exemption from payment of rental fees), he seeks a stay of the BLM decision pending appeal in order "to preserve the option of paying the rental fees" from which exemption is claimed. See Petition for Stay at 1. He has filed a timely statement of reasons.

The September BLM decision rejected Worst's application for deferment of assessment work filed on August 30, 1993, on its merits, finding that, contrary to conclusions stated by Worst in his application, he was not denied access by the United States Forest Service to claims located in the Superstition Wilderness Area. BLM did not consider whether, under the Act of October 5, 1992,, Worst was eligible to apply for deferment of the statutory fee. Had consideration been given to this question, however, the result reached by the BLM decision would have been the same, because the group of claims for which deferment of assessment is sought consists of 13 claims, A MC 209536 through A MC 209548 inclusive, a factor disqualifying him for relief under the Act. See 106 Stat. 1378 (1992).

In his petition for stay, Worst addresses the four standards established by the regulation governing such relief, 43 CFR 4.21(b)(1) (58 FR 4943 (Jan. 10, 1993)). Pertinently, concerning whether he is able to show that there is a likelihood that he will prevail on the merits of his appeal, his arguments are directed entirely to the merits of the question whether he should be granted a deferment of assessment work, and concern whether he was denied necessary access to his claims. He disputes that, in order to obtain the desired deferment, he need show that he is a small miner within the meaning of the Act of October 5, 1992, but insists instead that "THIS IS NOT A PETITION REQUESTING A SMALL MINER'S EXEMPTION." (Emphasis in original.)

[1] Inasmuch as exemption from payment of the fee required by the Act is only available to small miners, who are persons, by definition, who hold 10 claims or less, Worst has demonstrated that he will not succeed on the merits of his appeal. Because the stay regulation, 43 CFR 4.21(b)(2), places the burden of proof to establish that a stay should be granted on the moving party and establishes that likelihood of success is a principal standard by which issuance of stay is to be judged (see id. at subsection (b)(1)), the request for stay must be denied. In this instance, moreover, evaluation of the stay request also establishes that the ultimate disposition of this appeal must be to affirm the result reached by the decision from which appeal was taken and that no purpose would be served by delaying decision of this case.

[2] Worst has made abundantly clear that his appeal depends entirely on the validity of his petition for deferment of assessment work made under Departmental regulations establishing conditions for allowance of temporary deferment from performance of assessment work. Nonetheless, it is clear on the face of the record before us that, because he holds 13 claims, he is not entitled to the exemption created by the Act of October 5, 1992, which is available only to miners who hold "ten or fewer claims." See 106 Stat. 1378 (1992); Lee H. and Goldie E. Rice, 128 IBLA 137, 141 (1994). Because Worst neither applied for nor qualifies for a small miner's exemption, he is not entitled to exemption from payment of the fee established by the Act of October 5, 1992. BLM correctly denied allowance of an exemption in his case.

The regulations promulgated to implement the Act provide (at 43 CFR 3833.1-7) for filing petitions for deferment of assessment work. Worst was therefore entitled to file, as he did, a petition for deferment of assessment work in order to avoid the rental, provided he was a small miner. See 58 FR 38200 (July 15, 1993). Nonetheless, because he held more than 10 claims, he was not a small miner as that term is defined by regulations implementing the Act. Not being entitled to claim that status because of the number of claims held by him, his petition was properly denied. While the denial was made by BLM on the merits of the application for deferment itself, without regard to Worst's status as a small miner, the result reached was correct. We therefore need not inquire into the merits of the claim for deferment, since Worst was not a member of the class entitled to claim exemption from payment of the fee required by the Act.

We therefore find that the request for stay made under 43 CFR 4.21 must be denied because the record establishes that Worst failed to qualify as a small miner, as he was required to do if he were to be exempted from payment of a rental fee under provision of section 3833.1-7(e) of the regulation published at 58 FR 38200 (July 15, 1993). It is further concluded that, because he failed to qualify for exemption as a small miner, his petition for deferment under the small miner regulation was properly denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the request for stay is denied and the decision appealed from is affirmed as modified by this opinion.

Franklin D. Arness
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

