

RICHARD L. SHREVES

IBLA 94-77 Decided March 15, 1995

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring mining claims abandoned and void. MMC 73705 etc.

Affirmed.

1. Mining Claims: Abandonment–Mining Claims: Rental or Claim Maintenance Fees: Generally–Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

An applicant for a small miner exemption from payment of rental fees under the Act of Oct. 5, 1992, must file a certified statement by Aug. 31, 1993, for each of the assessment years (ending Sept. 1, 1993, and Sept. 1, 1994) for which the exemption is claimed. When the applicant fails to pay the rental fee for either of the assessment years and the certificate of exemption includes only 1 year, the claims are properly deemed abandoned and void.

APPEARANCES: Richard L. Shreves, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Richard L. Shreves brings this appeal from an October 8, 1993, decision of the Montana State Office, Bureau of Land Management (BLM), declaring appellant's mining claims abandoned and void. ^{1/} The ground for the decision was that no mining claim rental fees or certificate of exemption had been filed by August 31, 1993, on behalf of the claims for the assessment year beginning September 1, 1993, and ending on September 1, 1994, as required by Act of October 5, 1992 (Act), P.L. No. 102-381, 106 Stat. 1374, 1378-79. The BLM decision acknowledged that a certificate of exemption with respect to the claims had been timely received on August 16, 1993, for the assessment year beginning September 1, 1992, and ending September 1, 1993, but held that under the statute and the implementing regulations a

^{1/} The mining claims adjudicated by the BLM decision bear the following serial numbers: MMC 73705; MMC 75980; MMC 101316; MMC 118942; and MTMMC 179533.

separate certificate of exemption was required to be filed for each of the assessment years for which an exemption is claimed. See 43 CFR 3833.1-7(d) (1993). 2/

In his statement of reasons for appeal, appellant protests his lack of notice as to what was required to comply with the Act. Appellant indicates that he did not receive a copy of the regulations implementing the Act until after the filing deadline. Further, he contends that the form for applying for the certificate of exemption forwarded to him by BLM lacked instructions. Appellant requests an opportunity to correct his omission.

The relevant statute enacted by Congress provides in pertinent part that:

[F]or each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28-28e), and the filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 * * *. [Emphasis added.]

106 Stat. 1378. The Act also contained an identical provision establishing rental fees for the following assessment year ending at noon on September 1, 1994, which required payment of an additional \$100 rental fee for each claim on or before August 31, 1993. 106 Stat. 1378-79. 3/

[1] The statute provides that "failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant." 106 Stat. 1379; see 43 CFR 3833.4(a)(2) (1993). However, the Act also provides an exception from this annual rental requirement known as the "small miner" exemption, available to claimants holding 10 or fewer mining claims, millsites, and/or tunnel sites on Federal lands. 106 Stat.

2/ The regulations promulgated to implement the mining claim rental fee provisions of the Act of Oct. 5, 1992, are found in the 1993 codification of the Code of Federal Regulations at Subpart 3833.

3/ Implementing Departmental regulations provide in pertinent part as follows:

"Mining claim or site located on or before October 5, 1992. A nonrefundable rental fee of \$100.00 for each mining claim, mill site, or tunnel site, shall be paid on or before August 31, 1993, for each of the assessment years beginning on September 1, 1992, and September 1, 1993, or a combined rental fee of \$200."
43 CFR 3833.1-5(b) (1993).

1378-79; 43 CFR 3833.1-5(d), 3833.1-6, 3833.1-7 (1993); see William B. Wray, 129 IBLA 173 (1994). Thus, the Act provides that the claimant may, in certain circumstances, elect to either pay the rental fee or perform the assessment work, certify (by August 31, 1993) the performance of such work (prospectively in the case of work for the assessment year ending September 1, 1994), and meet the filing requirements of section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1988). See 106 Stat. 1378, 1379; 43 CFR 3833.1-7 (1993). The applicant for a small miner exemption is required, however, to file a separate certificate by August 31, 1993, for each of the assessment years (ending September 1, 1993, and ending September 1, 1994) for which he is seeking an exemption. 43 CFR 3833.1-7(d) (1993); Edwin L. Evans, 132 IBLA 103 (1995). 4/

In the absence of payment of the annual rental fee, the statute and the implementing regulations clearly require a timely filing (by August 31, 1993) of a certificate of exemption for each of the assessment years (ending September 1, 1993, and September 1, 1994). See 43 CFR 3833.1-7(b), (d), 43 CFR 3833.4(a)(2) (1993). When a claimant fails to file an application or qualify for a small miner exemption from the rental fee requirement, failure to pay the rental fee in accordance with the Act and the regulations results in a conclusive presumption of abandonment. Edwin L. Evans, 132 IBLA at 106; William B. Wray, 129 IBLA at 175; Lee H. Rice, 128 IBLA 137, 141 (1994). The Department is without authority to excuse lack of compliance with the rental fee requirement of the Act, to extend the time for compliance, or to afford any relief from the statutory consequences. Id. In the absence of timely rental payments or an applicable exemption, BLM properly declared the claims abandoned and void. 43 CFR 3833.4(a)(2).

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.

C. Randall Grant, Jr.
Administrative Judge

I concur:

John H. Kelly
Administrative Judge

4/ The statute and implementing regulations contain other explicit requirements. The applicant must hold 10 or fewer mining and millsite claims on Federal lands. Further, the applicant, operating under a valid notice or plan of operation, must either conduct exploration for possible valuable mineralization on or produce not less than \$1,500 and not more than \$800,000 from his claims. Additionally, applicant must have less than 10 acres of unreclaimed surface disturbance in connection with these operations. See 43 CFR 3833.1-6 (1993).

