

LEWIS JOHN EPPS

IBLA 96-249 Decided May 22, 1996

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring mining claims abandoned and void. AA-34363 and AA-34364.

Affirmed as modified.

1. Mining Claims: Rental or Claim Maintenance Fees: Generally

Under secs. 10101-10106 of the Omnibus Budget Reconciliation Act of Aug. 10, 1993, P.L. 103-66, 107 Stat. 312, 405-06, and 43 CFR 3833.1-5, 3833.1-6, and 3833.1-7, a person who held unpatented mining claims was required to file a \$100-per-claim maintenance fee or a small miner waiver certification on or before Aug. 31, 1995, for the 1996 assessment year. The claims are properly declared null and void for failure to comply notwithstanding claimant's allegation that he attempted to pay the maintenance fees for the 1996 assessment year in advance in August 1994, where that allegation is not supported by any evidence.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Lewis John Epps has appealed from the February 12, 1996, decision of the Alaska State Office, Bureau of Land Management (BLM), declaring the Rainbow Nos. 1 and 2 mining claims (AA-34363 and AA-34364) abandoned and void because no \$100-per-claim maintenance fees were paid or small miner waiver certification filed for the claims on or before August 31, 1995, for the 1996 assessment year, as required by section 10101 of the Omnibus Budget Reconciliation Act of 1993, (the Act) 30 U.S.C. § 28f (1994) and 43 CFR 3833.1-5, 3833.1-6, and 3833.1-7. 1/

[1] Section 10101(a) of the Act provides that the

holder of each unpatented mining claim, mill or tunnel site * * * shall pay to the Secretary of the Interior, on or before August 31 of each year, for [the] years 1994 through 1998, a claim maintenance fee of \$100 per claim * * * in lieu of the

1/ Appellant also requested a stay of the effect of this decision pending appeal. That request was denied by order dated Apr. 29, 1996.

assessment work requirement contained in the Mining Law of 1872 * * * and the related filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744 (a) and (c)).

30 U.S.C. § 28f(a) (1994); see 43 CFR 3833.1-5. Section 10104 of the Act provides that failure to pay the claim maintenance fee "shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law." 30 U.S.C. § 28i (1994); see 43 CFR 3833.4(a)(2).

In his statement of reasons appellant asserts that he does not wish to abandon his claims. Appellant states that an attempt was made to pay the fees prior to August 31, 1995, but payment was refused. According to appellant, the attempt to pay the fees for the 1996 assessment year was made when the 1995 maintenance fee payment was made. Appellant asserts that at that time he attempted to pay maintenance fees for 5 years and was told that the "computer" would not accept the payment.

Appellant does not dispute that his 1996 payment was not timely. The file contains a Receipt and Accounting Advice form indicating that appellant's payment of \$200 for maintenance fees for the claims for the 1996 assessment year was received by BLM on September 29, 1995, after the August 31, 1995, deadline. Nor was the payment made when appellant timely paid the 1995 maintenance fees on August 12, 1994, as it is not noted on the Receipt and Accounting Advice of that date, which shows that payment of \$200, the correct amount for two claims for the 1995 assessment year. The file contains nothing to indicate that appellant either timely paid the required fees or filed a small miner waiver certification for the 1996 assessment year.

In the preamble to the final rulemaking, BLM responded to a comment regarding payment of maintenance fees for years in the future:

One comment asked whether maintenance fees can be paid for years in the future despite the fact that assessment work always has had to be performed annually. The answer is yes because the maintenance fee has only to be paid on or before the August 31 deadlines, so that a claimant could pay \$500 to hold a claim through September 1999.

59 FR 44849 (Aug. 30, 1994). We note that BLM had not announced this interpretation on August 12, 1994, when appellant claims he attempted to make advance payment for the 1996 assessment year. Therefore, the BLM employees would have had no basis on that date to believe that refusal to allow future filing of the maintenance fees was contrary to BLM policy.

Even assuming arguendo that BLM's indication that payments could be accepted in advance should have been enforced here, appellant would not prevail. First, there is nothing in the case file to support appellant's

contention that he attempted to make payment for the 1996 assessment year in August 1994 when payment for the 1995 assessment year was made. The absence of proof is critical, as a claimant cannot be allowed to escape the consequences of late filing simply by alleging that he attempted to make payment in advance and was refused. The fact that appellant submitted payment for the 1996 assessment year, even though untimely, indicates that he was well aware that his obligation to pay maintenance fees annually had not been forgiven by any previous failure by BLM to accept an advance payment.

As appellant did not comply with the requirements of the Act, BLM properly declared his claims forfeited and null and void. ^{2/} See Paul W. Tobeler, 131 IBLA 245 (1994); William Jenkins, 131 IBLA 166 (1994); Nannie Edwards, 130 IBLA 59, 60 (1994); Lee H. & Goldie E. Rice, 128 IBLA 137, 141-42 (1994). The Board has upheld the self-operative nature of the statute and regulations. Paul W. Tobeler, 131 IBLA at 249. Consequently, the claims were declared forfeited, notwithstanding the fact that appellant may not have wished to abandon them.

Accordingly, pursuant to the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

David L. Hughes
Administrative Judge

I concur.

Bruce R. Harris
Deputy Chief Administrative Judge

^{2/} BLM's decision incorrectly stated that the claims are "deemed abandoned and declared void." The Act provides that failure to file as required constitutes a "forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law." (Emphasis supplied.) BLM's decision is accordingly modified to reflect the consequences specified by the Act.

