

ROBERT C. BISHOP, ET AL.

IBLA 94-561

Decided February 10, 1997

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring mining claims abandoned and void for failure to pay rental fees or submit a certification of exemption from payment. MMC 79486, et al.

Affirmed.

1. Mining Claims: Abandonment–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 record indicates no certification of exemption from rental fees was filed for the assessment year ending Sept. 1, 1994, the claims are properly deemed abandoned and void.

APPEARANCES: Robert C. Bishop, Butte, Montana, for claimants.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Robert C. Bishop, Betty Jean Bishop, Valerie D. Bishop, Desta F. Bishop O'Connor, and Robert A. O'Connor have appealed from a May 13, 1994, decision of the Montana State Office, Bureau of Land Management (BLM), declaring mining claims MMC 79486, MMC 88136, MMC 89669, MMC 89670, MMC 108189, MMC 108190, MMC 130000, MMC 130001, MMC 161769, MMC 161771 abandoned and void. The basis for the BLM decision was the failure to either pay annual rental fees or submit a qualifying certification of exemption from payment by August 31, 1993, for the assessment year commencing September 1, 1993, and ending September 1, 1994.

BLM's decision declared the claims abandoned and void because the requirements of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), P.L. 102-381, 106 Stat. 1374, 1378-79 (1992), had not been met. BLM explained that, under the Act, in order to maintain a mining claim, claimants had to either pay rental fees

for each claim or submit a certification of exemption from payment of rental fees (small miner exemption) on or before August 31, 1993. BLM did not receive any rental fees for appellants' claims, but on August 30, 1993, it did receive a certification of exemption for the assessment year beginning September 1, 1992, and ending September 1, 1993, listing 10 claims. However, BLM did not receive a certification of exemption for the assessment year beginning September 1, 1993, and ending September 1, 1994.

The decision in this appeal is controlled by provisions of statute. The Act of October 5, 1992, provides in 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 a virtually 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.

[1] The only exception provided from this rental requirement is the so-called small miner exemption, available to claimants holding 10 or fewer claims on Federal lands who meet all the conditions set forth in 43 CFR 3833.1-6(a) (1993), which essentially tracks the statutory criteria. See William B. Wray, 129 IBLA 173 (1994). While appellants timely filed a certification of exemption for the assessment year ending September 1, 1993, they admit they did not file a certification of exemption for the assessment year ending September 1, 1994. The statute and the implementing regulations clearly require a timely filing (by August 31, 1993) of either a \$100 rental fee or a certification of exemption for each of the relevant assessment years, i.e., the assessment year ending September 1, 1993, and the assessment year ending September 1, 1994. See 106 Stat 1378-79; 43 CFR 3833.1-7(b) and (d), 3833.4(a)(2)(1993). Thus, the applicant for a small miner exemption is required to file a certificate by August 31, 1993, for each of the 2 assessment years (ending September 1, 1993, and September 1, 1994) for which he is seeking an exemption. Edwin L. Evans, 132 IBLA 103, 105 (1995).

In their statement of reasons appellants state they did not file the certification of exemption for the claims for the assessment year beginning at noon on September 1, 1993, and ending at noon on September 1, 1994, because the requirement to do so before August 31, 1993, would cause them

to "do an unlawful act of stating that we had performed assessment work after September 1, 1993, before August 31, 1993." Appellants assert that under 43 CFR 3833.4(a) they should have the right to perform the assessment work and file the necessary certification of exemption before August 31, 1994.

In addressing appellants' argument on appeal, it is necessary to distinguish the requirements of the Act of October 5, 1992, and the implementing regulations regarding certification of exemption from the rental fee requirements, on the one hand, and the annual filings of an affidavit of assessment work for claims required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1994). The filing of the certification of exemption (the small miner exemption) is separate from the requirement of performing and filing the affidavit of annual assessment work. Both are required documents but they have different filing deadlines.

The Act of October 5, 1992, did not require that the assessment work or FLPMA filings be performed in advance of the relevant assessment year, but that it be performed and filed in accordance with the law. The \$100 rental fee required by the Act of October 5, 1992, was in lieu of the assessment work requirements, but for those claimants who elected to claim the small miner exemption the Act required that they perform the assessment work required by the Mining Law of 1872 (30 U.S.C. §§ 28-28e (1994)) and meet the filing requirements of FLPMA (43 U.S.C. §§ 1744(a) and (c) 1994) with respect to the claims. Thus, the implementing regulations note that affidavit of assessment work for the assessment year ending September 1, 1994, required to be filed by section 314 of FLPMA, is due by December 30, 1994. 43 CFR 3833.1-7(d) (1993). In language which is consistent with this distinction, the regulations implementing the Act of October 5, 1992, provide that for the assessment year ending September 1, 1994, the certified statement claiming the small miner exemption "shall state that the assessment work will be completed in that year." 43 CFR 3833.1-7(d)(5)(ii) (1993) (emphasis added). Hence, the requirement was that those claiming the small miner exemption declare that they would complete the work in the future and file the affidavit of assessment work in accordance with FLPMA. Accordingly, we find no inconsistency in the statutory requirements.

Appellants also contend that the BLM holding would put them in violation of the State of Montana statute requiring a claimant of an unpatented mining claim to perform annual assessment work of \$100 per claim during each assessment year, *i.e.*, between noon September 1 of one year and noon September 1 of the following year. However, as explained above, the requirement to certify qualification for an exemption for both assessment years by August 31, 1993, does not alter the obligation to perform assessment work during the relevant assessment year.

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 certification 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). Appellants admit they did not file a separate certification of exemption for the 1994 assessment year, nor did they pay the rental fee. 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).

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 affirmed.

C. Randall Grant, Jr.
Administrative Judge

I concur.

Franklin D. Amess
Administrative Judge

