

LITTLE BEAR MINING & EXPLORATION, INC.

IBLA 94-658

Decided March 5, 1997

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring mining claims abandoned and void. MMC 6671, MMC 6673, MMC 75109 through MMC 75111, MMC 109071 through MMC 109075.

Reversed and remanded.

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

A decision rejecting a small miner exemption and declaring claims abandoned and void for failure to pay rental fees on the grounds that claimant owned more than 10 claims is properly vacated where claimant shows it filed certifications of exemption for the 1993 and 1994 assessment years on Aug. 23, 1993, listing only 10 claims, and other evidence demonstrates that it had abandoned any additional claims previously held as of the date of the submission of its certification of exemption.

2. Mining Claims: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold–Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

The decision to elect the small miner exemption rather than pay the rental fee imposed by the Act of Oct. 5, 1992, obligated the mining claimant to comply with the filing requirements of sec. 314(a) of FLPMA and failure to so comply gives rise to a conclusive presumption of abandonment.

APPEARANCES: Richard T. Dale, Butte, Montana, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Little Bear Mining & Exploration, Inc. (Little Bear), has appealed from so much of a decision of the Montana State Office, Bureau of Land Management (BLM), dated May 31, 1994, as declared unpatented mining claims MMC 6671, MMC 6673, MMC 75109 through MMC 75111, and MMC 109071 through MMC 109075 abandoned and void for failure to timely pay the rental fees

required by 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), and 43 CFR 3833.1-5 (1993) for the 1993 and 1994 assessment years.

On August 31, 1993, claimant filed certifications of exemption from the rental fees for each of the assessment years ending September 1, 1993, and 1994. These certifications were filed in lieu of submission of annual rental payments of \$100 for each claim for each assessment year under a provision of the Act known as the small miner exemption which waived rental payments upon a showing, inter alia, that the claimant held no more than 10 mining claims. Both certifications listed only 10 mining claims. 1/ By notice dated April 6, 1994, BLM informed Little Bear it would not accept those documents because BLM records indicated that Little Bear owned 16 claims when the certifications were received. 2/ BLM afforded claimant an opportunity to establish within 30 days that it had reduced its holdings to 10 or fewer claims as of August 31, 1993.

In response thereto, claimants submitted a copy of the minutes of a Director's meeting held July 10, 1993, wherein a majority of the directors of Little Bear declared that six claims were abandoned in order to qualify for the small miner exemption and identified the specific claims abandoned. In an accompanying statement, Little Bear asserted that it took all actions necessary to abandon the six claims prior to the August 31, 1993, deadline, and, therefore, held only 10 claims as of that date. In its decision, BLM noted claimant's assertions but, ostensibly relying on this Board's decision in Lee H. and Goldie E. Rice, 128 IBLA 137 (1994), held that these statements were insufficient to establish entitlement to a small miner exemption, where BLM records, as of August 31, 1993, indicated otherwise. Little Bear duly appealed from this determination.

In its statement of reasons, appellant reiterates its contention that it did not hold 16 unpatented claims on August 31, 1993, but rather had taken all necessary steps to abandon six of those claims in conformity with Montana law. Appellant notes that further evidence of its intention to abandon the six claims in question could be derived from its failure to take any steps to maintain these claims.

1/ The claims listed were: JAMSHA (MMC 6671), Black Spot (MMC 6673), FOX-DALE (MMC 75109), Fouche Dump (MMC 75110), Old Channel (MMC 75111), HEINZE (MMC 109071), BECKY (MMC 109072), BRIAN (MMC 109073), LUKE (MMC 109074), and JEREMY (MMC 109075).

2/ In determining the qualifications of a corporate claimant seeking the small miner exemption, the Department must look beyond the number of unpatented mining claims held by the corporation and scrutinize the numbers held by those "that have an interest in" such entity. 43 CFR 3833.1-6(a)(3) (1993).

[1] The Board has recently addressed the question presented by this appeal in a number of decisions. See, e.g., William J. Montgomery, 138 IBLA 31 (1997); Burbank Gold, Ltd., 138 IBLA 17 (1997); The Big Blue Sapphire Co., 138 IBLA 1 (1997). In those decisions, we held that

[s]o long as a claimant who sought a small miner exemption can establish that, with respect to any claim in excess of 10, the elements of abandonment predated August 31, 1993, he or she has met the statutory and regulatory requirements with respect to the limitation of claim ownership, regardless of the point in time at which these facts are communicated to BLM.

The Big Blue Sapphire Co., *supra* at 5. Applying these precedents to the instant appeal, we believe appellant has shown that the necessary elements of abandonment with respect to the claims in excess of 10 predated August 31, 1993. Accordingly, we must reverse the decision below to the extent that it held the 10 claims listed in appellant's certification of exemption abandoned and void because appellant was not qualified to obtain a small miner exemption.

[2] This does not end the matter, however. Where an individual sought and received a small miner exemption that individual was required, under the express terms of the Act, to perform the assessment work for those claims and meet the filing requirements of section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) and (c) (1994). See Arlin D. Walkup, 137 IBLA 259 (1996). Under this provision, failure to provide BLM with a copy of the affidavit of assessment work performed or, where appropriate, a notice of intention to hold, on or before December 30 of each calendar year, gives rise to a conclusive presumption of abandonment of the claim. See, e.g., Red Top Mercury Mines, Inc. v. United States, 887 F.2d 198 (9th Cir. 1989); NL Industries, Inc. v. Secretary of the Interior, 777 F.2d 433 (9th Cir. 1985).

A review of the case files submitted with this appeal fails to affirmatively show that appellant filed a copy of the 1993 affidavit of labor with BLM on or before December 30, 1993. As noted above, failure to comply with the filing requirements of FLPMA would result in the conclusive presumption of abandonment of these claims, notwithstanding the fact that Little Bear otherwise qualified for the small miner exemption. 43 CFR 3833.4(a)(1) (1993); Melvin J. Young, 135 IBLA 336 (1996); Lee Jesse Peterson, 133 IBLA 381 (1995). On remand, BLM should examine this issue and, if its records fail to indicate compliance with the annual filing provisions of FLPMA, it should afford appellant an opportunity to establish that it did timely file a copy of its affidavit of labor with BLM.

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 reversed as to those claims recorded in the certification of exemption and the case is remanded for further review of whether claimant complied with section 314 of FLPMA.

James L. Burski
Administrative Judge

I concur.

John H. Kelly
Administrative Judge

