

BURNETTA M. LONG

IBLA 97-162, 97-163

Decided May 29, 1997

Appeals from decisions declaring mining claims forfeited for failure to timely file claim maintenance fees or fee payment waiver certifications. ORMC 52260 et al.

Affirmed.

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

A decision declaring mining claims forfeited for failure to timely file a maintenance fee payment waiver certification will be affirmed when the claimant does not submit evidence that it is more probable than not that the document was actually filed and misplaced.

APPEARANCES: Burnetta M. Long, pro se; Marianne King, Esq., Office of the Regional Solicitor, Portland, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Burnetta M. Long has appealed four December 20, 1996, Decisions of the Oregon State Office, Bureau of Land Management (BLM), declaring the Millsite #1 (ORMC 52260), Lost Timber (ORMC 78227), Sierra 7 (ORMC 47508), Sierra 8 - Sierra 10 (ORMC 50421 - ORMC 50423), and Sierra 22 (ORMC 68787) mining claims forfeited by operation of law for failure to file either claim maintenance fees or a maintenance fee waiver certification on or before August 31, 1996, for the 1997 assessment year, as required by the Omnibus Budget Reconciliation Act of August 10, 1993, Pub. L. No. 103-66, 107 Stat. 312 (1993).

The record contains a copy of an affidavit of annual assessment work for the Millsite #1, Lost Timber, and Sierra 25-32 claims that was date-stamped August 30, 1996, by BLM and a Temporary Receipt No. 101415 for \$50 on account of "10 - POL [proof of labor]" dated August 30, 1996, by BLM. The record also contains a copy of another affidavit of annual assessment work for the Millsite 2, Millsite 3, and Sierra 7-10 and 21-24 claims date-stamped August 30, 1996, by BLM and a Temporary Receipt No. 101414 for \$50 on account of "10 - POL [proof of labor]" dated August 30, 1996, by BLM.

Appellant has enclosed copies of these documents as well as copies of the face side only of two maintenance fee payment waiver certifications, one listing the Millsite 1, Lost Timber, and Sierra 25-32 mining claims, the other listing the Millsite 2-3, Sierra 7-10, and Sierra 21-24 mining claims. The certifications are not date-stamped.

Appellant states in her notice of appeal:

All required records were personally hand delivered to and accepted by BLM Agent Tina Seibert. The required fees were paid and receipted at the same time. A Small Miners Exemption was filed at the same time (ten claims or less).

* * * On December 27, 1996, Robert Long of the Bonny-L-Mining Corporation and Burnetta Long, a single claimant, went to the Portland office of BLM to see what the problem was. It took Agent David Del[a]van and others over three hours to locate the complete files, which were lost. Agent Tina Seibert was not available to contact for information. When the files were located, it was determined that the cause of cancellation of claims was due to the fact the Small Miners Exemption forms could not be found, so when the claims were to be recorded, they were automatically cancelled.

* * * At the time of the December 27th office visit, Agent David Del[a]van stated it was our duty as the claimants to obtain a dated stamped copy of the exemption waiver for our records. * * * Agent Del[a]van told us to go home, get our copy, bring it back to the office and in the meantime, they would look for the papers. On January 16, 1997, we returned to the Portland office. This time Agent Tina Seibert was also available. She could verify the fact that we were there on August 30, 1996 to file our paperwork, but they again could not find the exemption papers. When they tired of looking, we were advised to go home, file an Appeal and Stay and to relocate the claims. They said the papers were lost and could be in any body else's files.

Similarly, the Bonny-L-Mining Corporation has appealed two December 20, 1996, Decisions of the Oregon State Office, BLM, declaring the Sierra 25 (ORMC 75069), Sierra 26 (ORMC 79060), Sierra 27 (ORMC 81219), Sierra 28 (ORMC 90389), Sierra 29 (ORMC 86412), Sierra 21 (ORMC 67509), Sierra 23 (ORMC 69304), Sierra 24 (ORMC 74116), Millsite 2 (ORMC 63820), and Millsite 3 (ORMC 70072) mining claims forfeited by operation of law for failure to file either claim maintenance fees or a maintenance fee waiver certification on or before August 31, 1996, for the 1997 assessment year.

The record for the two Decisions appealed by the Bonny-L-Mining Corporation contains a copy of two affidavits of annual assessment work filed by Burnetta M. Long, as agent for the Bonny-L-Mining Corporation, one for the Sierra 21-24 and the Millsite 1-3 claims and a second for the Sierra

25-29 claims, both bearing a BLM date-stamp of August 30, 1996. A Temporary Receipt No. 101414 for \$50 on account of "10 - POL [proof of labor]" dated August 30, 1996, by BLM is also in the record.

The Bonny-L-Mining Corporation submitted copies of the foregoing documents as well as a copy of the face side only of two maintenance fee payment waiver certifications, one listing the Millsite 1, Lost Timber, Sierra 25-32 mining claims and the other listing the Sierra 7-10, the Sierra 21-24, and the Millsite 2 and Millsite 3 claims. Neither certification is date-stamped.

The Bonny-L-Mining Corporation submitted a statement similar to that of Burnetta M. Long set forth above.

In response to our March 27, 1997, Orders requesting BLM to file Answers to Appellants' statements, BLM has filed an Answer and Motion for Consolidation of the two appeals. The BLM Motion for Consolidation is granted.

In BLM's Answer, Tina Seibert, BLM Land Law Examiner, states she remembers the August 30, 1996, visit to BLM by Burnetta Long and a young man, but does not remember what documents they filed. (Declaration of Tina Seibert, Ex. A, Page 1.) She adds:

[O]ur records indicate by the date stamp and receipted copies in the case file that they did in fact file a proof of labor document and submitted the required \$5.00 proof of labor service fee. The record does not indicate the required maintenance fee waiver was filed. Because of our receipting and processing procedure as outlined herein, and since all recordation and maintenance documents received in this office are kept together and processed concurrently, I cannot explain why we would have the proof of labor document but not the maintenance fee waiver.

Our procedure begins with the receiving of the documents and affixing a date stamp showing the time and date of receipt, making a copy of the documents, and returning the original of the proof of labor to the owner. If a waiver is filed, we keep the original and give a copy to the owner. We prepare a temporary receipt for the submitted fees, give the claimants the white carbon for their records, and staple the green carbon to the documents we retain along with their payment. This package is then given to our Accounts Office for processing. All of this is done while the claimants are present at the time of filing.

The BLM's Answer is also accompanied by a Declaration of Dean I. Delavan. It relates his version of Appellants' December 27, 1996, and January 1997 visits:

[Appellants state it] took over three hours to locate the files, which the claimants held were lost. I recall that it did take some time, probably an hour, to locate the files which were

under the management of and found in the office of the adjudicator who authored the [December 20, 1996] rejection decisions, but who was not in the BLM office the day of the claimants inquiry. No Small Miners Exemption was contained in the case file.

It is my recollection that I discussed at length with the claimants, the effect of the failure to file a maintenance fee waiver certificate or pay a fee in lieu thereof, and file proof of labor documents if required. The record in this case did not indicate that they had filed a maintenance fee waiver certificate and they did not have a date stamped copy showing that the required document had ever been filed. However, the case file record did show, as evidenced by a date stamped copy, that they had filed a proof of labor document on August 30, 1996, and that they had been given a receipt for the same.

Because it is BLM practice to return a claimants date stamped copy of all mining claim documents filed in this office, whether filed in person or by mail, I suggested that they go home and search their records for a BLM date stamped copy of the waiver certificate showing that it had been received by this office. I recall telling the claimants that it is possible the waiver certificate could have inadvertently been filed into another case file. I also told them that because of the way cases are processed it is highly improbable that such an event would occur; it is particularly unlikely in these cases because the Small Miner Exemption form, if it had been filed with the proof of labor, would have remained with the proof of labor in the case file. Since the Longs said that they did not receive any date stamped copies of the documents they filed, I then suggested that when documents are filed over the counter, they ask for a date stamped copy as a proof of receipt and as an alternative, that if they mail in critical documents, they might want to send them certified so as to establish a date of receipt.

Burnetta Long and Robert Long returned to the office some time in mid-January 1997. Land Law Examiner Tina Seibert was here at that time and both Tina and I spoke with them. They said that they did not have a date stamped copy of the waiver certificate. At that time, we looked through the backlog of date stamped but unprocessed filings and failed to find a waiver certificate for the Longs. I explained that since the BLM record was devoid of any evidence showing the waiver document was ever received, there was nothing we could do to preserve their filings, but that they did have the right of appeal.

(Answer, Ex. B, at 1-2.)

[1] In Trevor A. Freeman, 138 IBLA 70, 72 (1997), we stated:

All else appearing regular, administrative officials are presumed to have properly discharged their duties and not lost or misplaced legally significant documents submitted for filing. H.S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). The Board accords great weight to this presumption of regularity, which is not overcome by an uncorroborated statement that the document was mailed to BLM. See Bernard S. Storper, 60 IBLA 67 (1981), aff'd, Civ. No. 82-0449 (D.D.C. Jan. 20, 1983). To overcome the presumption of regularity, an appellant must present evidence which establishes that it is "more probable than not" that the missing document was actually received and subsequently misplaced. See Nahama & Weagant Energy Co., 108 IBLA 209, 214 (1989).

See also John E. Baxter, 138 IBLA 129, 131 (1997). Appellants have not presented such evidence in this case. The copies of the Certifications submitted by Appellants with their Notices of Appeal are not date-stamped. The BLM would have failed to follow its normal procedure described above of date-stamping and returning copies of such Certifications to the claimants for these to be copies of documents BLM lost. Under the circumstances of this case, we cannot find these copies constitute evidence demonstrating it is more probable than not that BLM received Appellants' Certifications and subsequently misplaced them.

Pursuant to the applicable regulation, in the absence of payment of the claim maintenance fee, failure to file the maintenance fee payment waiver certification by the August 31 deadline provided in 43 C.F.R. § 3833.1-7 shall be deemed conclusively to constitute a forfeiture of the mining claim. 43 C.F.R. § 3833.4(a)(2). Harlow Corp., 135 IBLA 382, 385 (1996); Alamo Ranch Co., 135 IBLA 61, 76 (1996). We conclude that BLM properly declared Appellants' claims forfeited.

Therefore, in accordance with the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, BLM's Decisions are affirmed.

Will A. Irwin
Administrative Judge

I concur:

R.W. Mullen
Administrative Judge