

MELVILLE P. SPRINGER

IBLA 95-430

Decided October 20, 1997

Appeal from a decision of the California State Office, Bureau of Land Management, declaring mining claims abandoned and void. CAMC 247578 through CAMC 247583.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim—Federal Land Policy and Management Act of 1976: Service Charges—Mining Claims: Abandonment—Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

Mining claims were properly declared abandoned and void when a claimant electing the small miner exemption received at his last address of record a notice of deficiency from BLM for failure to send service fees with the annual assessment work notice and failed to refile the affidavit, with service fees attached, within 30 days, pursuant to 43 C.F.R. § 3833.1-3(b)(2) (1993).

APPEARANCES: Melville P. Springer, Bishop, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Melville P. Springer has appealed from an April 12, 1995, Decision of the California State Office, Bureau of Land Management (BLM), declaring his unpatented mining claims CAMC 247578 through CAMC 247583 abandoned and void for failure to timely submit 1994 assessment work notices with service fees in the amount of \$5 per claim.

Referring to requirements of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (the Act), Pub. L. No. 102-381, 106 Stat. 1374, 1378-79, and implementing regulations, that required miners holding 10 or fewer claims either to pay a claim "rental fee" of \$100 per claim, or declare a "small miner's exemption" and continue annual filings under section 314 of the Federal Land Policy and

Management Act of 1976 (FLPMA), the Decision states that Springer timely filed a "small miner's exemption" for assessment years 1993 and 1994, and made necessary filings for the 1993 assessment year. In 1994, Springer timely filed the affidavit of assessment work required by statute, but failed to file with it a \$5 service charge for each claim, as required by 43 C.F.R. § 3833.1-4(b). The Decision recites that after receipt of Springer's affidavit on November 21, 1994, BLM mailed Springer a "deficiency notice" returning the affidavit and granting him 30 days to send the affidavit with proper payment attached. The Decision then finds that, although BLM records show that Springer received the notice, BLM did not timely receive an affidavit with service charges from Springer. Therefore, BLM has declared the claims abandoned and void.

In addition to the "certification of exemption" forms filed by Springer, BLM's case file contains a copy of his 1994 affidavit of assessment work showing it was received on November 21, 1994. The file copy is stamped with the words "No Action Taken Due to Nonpayment of Fees, Returned 11-23-94." The file also contains a copy of a certified letter addressed to Springer informing him that BLM has returned the 1994 assessment work form and granting him 30 days to resubmit it with attached service fees. The returned certified mail receipt card reveals that the letter was mailed to "Melville P. Springer, 1396 Glenwood Lane, Bishop, California 93514-1919," and was signed as received by "Margaret R. Nakkas" on November 28, 1994. There is no documentation in the file showing that Springer responded to the letter, or refiled the affidavit with the required service fees.

In his Statement of Reasons on appeal, Springer explains that an illness for which he was hospitalized on June 15, 1994, impaired his memory and that during his convalescence his "mail didn't follow me very well." He states that it was not until after 2 months had passed that he "finally realized I hadn't done all my paperwork for the claims." Explaining that he had recovered his health by May 1995, he requests that he be allowed to "re-claim" the claims here at issue.

[1] In 1993, BLM altered Departmental regulations governing filings under section 314 of FLPMA to conform to the requirements of the Act, which became effective on October 5, 1992. For miners who claimed a small miner exemption under the Act (and therefore were still filing annual assessment work notices pursuant to section 314 of FLPMA), BLM, by regulation, continued to require the filing of a nonrefundable \$5 service charge with each annual assessment work affidavit. 43 C.F.R. § 3833.1-4(b) (1993). Under the 1993 regulations, when a claimant timely filed assessment notices but failed to include the required service fees, the Department was required to notify him of the deficiency by certified mail, and allow 30 days from his receipt of the notice within which to resubmit the affidavits with the appropriate fees included. 43 C.F.R. § 3833.1-3(b)(2) (1993). The 30-day curative period began when the miner received the deficiency notice. *Id.* After a claimant received a deficiency notice, his failure to timely resubmit assessment notices with the service charges rendered the claims abandoned and void. *Id.*

Springer claims that he was unable to properly manage his affairs for several months following the onset of his illness on June 15, 1994. Nonetheless, BLM's record contains a return receipt card showing that the deficiency notice was received at 1396 Glenwood Lane, Bishop, California, in late November of that year. This address is the address Springer gave as his return address on his Notice of Appeal to BLM's Decision. When BLM uses the mails to send a notice to any person entitled to a communication under Departmental regulations, that person will be deemed to have received it, if it was delivered to his last address of record on file in the appropriate office of BLM, regardless of whether it was in fact received by him. 43 C.F.R. § 1810.2(b). Under this rule, delivery to the last address of record establishes constructive notice to the addressee. Gerhard W. Befeld, 123 IBLA 118 (1992); J-O'B Operating Co., 97 IBLA 89, 91 (1987).

Springer's claims were properly declared abandoned and void because, after BLM's 30-day notice was received at his address of record, he failed to comply with the filing requirements of section 314 of FLPMA. The Act of October 5, 1992, did not eliminate this requirement for those claiming a small miner exemption. See Melvin J. Young, 135 IBLA 336, 338 (1995). Section 314(c) of FLPMA provides that failure to file evidence of annual assessment work or a notice of intention to hold "shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner." In 1985, the Supreme Court held section 314 of FLPMA to be valid, concluding that a mining claim for which timely filings are not made is extinguished by operation of law, notwithstanding the claimant's intent to hold the claim. United States v. Locke, 471 U.S. 84, 100 (1985). Congress did not provide for waiver of the section 314 requirements, and the Department may not excuse lack of compliance with the statute. Lynn Keith, 53 IBLA 192, 196 (1981). Moreover, Congress is assumed to be aware of the construction given to section 314 of FLPMA by the courts; strict application of the filing statute is therefore required when a small miner exemption is sought. See Lee H. and Goldie E. Rice, 128 IBLA 137, 141 (1994). We may not, therefore, excuse Springer's failure to make the timely filing required by section 314 because of his illness.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur.

John H. Kelly
Administrative Judge

