

E. ODIN STRANDBERG

IBLA 96-382

Decided August 18, 1998

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting certifications of exemption from payment of rental fees and declaring mining claims abandoned and void. AA 19365 through AA 19372.

Reversed.

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 the claimant owns more than 10 claims is properly reversed where the claimant shows that he filed certifications of exemption for the 1993 and 1994 assessment years on Aug. 31, 1993, listing only 8 claims, and recorded his affidavit of annual assessment work with BLM on Dec. 29, 1993, for only those same 8 claims.

APPEARANCES: E. Odin Stranberg, pro se.

OPINION BY ADMINISTRATIVE JUDGE TERRY

E. Odin Strandberg has appealed an April 8, 1996, Decision of the Alaska State Office, Bureau of Land Management (BLM), rejecting exemptions from payment of rental fees and declaring lode mining claims AA 19365 through AA 19372 abandoned and void for failure to pay annual rental fees of \$100 per year for the 1993 and 1994 assessment years on or before August 31, 1993, as required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (the Act), Pub. L. No. 102-381, 106 Stat. 1374 (1992). The Decision was stayed by Order dated June 26, 1996.

The relevant provisions of the Act, enacted by Congress on October 5, 1992, provide, in pertinent part, that

for 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 \* \* \*.

106 Stat. at 1378. A substantially identical provision required mining claimants to also pay by August 31, 1993, a \$100 rental fee to hold an unpatented mining claim, mill site, or tunnel site during the assessment year beginning September 1, 1993. Id. The legislation provided that "failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant \* \* \*." Id. at 1379.

The Act, however, created an exemption for a mining claimant with 10 or fewer claims who was either producing between \$1,500 and \$800,000 in gross revenues per year or was "performing exploration work to disclose, expose, or otherwise make known possible valuable mineralization \* \* \* under a valid notice or plan of operation" and had fewer than 10 acres of unreclaimed surface. Id. at 1378. Such a claimant could "elect to either pay the claim rental fee for such year or in lieu thereof do assessment work required by the Mining Law of 1872," meet the requirements of 43 U.S.C. § 1744(a) and (c) (1994), "and certify the performance of such assessment work to the Secretary by August 31, 1993." Id. The same exemption was allowed for the 1993-94 assessment year. Id. at 1378-79.

On August 31, 1993, E. Odin Strandberg and Lyle Roberts filed separate certifications of exemption from payment of rental fees for the assessment years ending September 1, 1993, and September 1, 1994, listing eight claims: the Everson #1 through #4 (AA 19365-AA 19368) and the Reed-Gauthier-Cooper #1 through #4 (AA 19369-AA 19372). BLM's Decision asserts that "on the date of signing, August 31, 1993," Strandberg and Roberts were co-owners of an additional 19 claims listed in Appendix II of BLM's Decision. <sup>1/</sup> Accordingly, BLM found the claimants unqualified for an exemption from the rental fees as of August 31, 1993, and therefore declared the claims AA 19365 through AA 19372 abandoned and void.

In his Statement of Reasons for appeal, Strandberg explains that he filled out his certification of exemption from payment of rental fee (Form 3830-1) at the BLM office under BLM guidance. He states:

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<sup>1/</sup> In a Decision of Apr. 24, 1995, BLM declared these 19 claims (AA 43852 through AA 43870) abandoned and void for failure to pay rental fees for the claims for the assessment years 1993 and 1994.

I understood at that time, and still maintain, that if I did not act on an additional 19 claims in Lyle Roberts' and my name, \* \* \* the said \* \* \* claims would be considered by BLM to be abandoned and thus allow the Claim Owners to meet the small miners exemption \* \* \*.

Strandberg asserts that he performed assessment work on only the eight claims adjudicated by BLM's April 8, 1996, Decision.

Strandberg's intent to drop the 19 claims and maintain only the 8 claims here at issue is corroborated by the affidavit of annual assessment work he filed with the local recorder on November 30, 1993, and with BLM on December 29, 1993. That affidavit lists only eight claims, AA 19365 through AA 19372.

[1] The circumstances in the case before us are similar to Calvin W. Barrett, 134 IBLA 356 (1996) and Washburn Mining Co., 133 IBLA 294 (1995). In Washburn, the claimant had timely filed certifications of exemption for both years, but BLM had denied the exemption because it had concluded that Appellant owned more than 10 claims. On appeal, Washburn argued that it had dropped two claims in order to meet the small miner exemption, noting that the statement of annual assessment work it had recorded on August 24, 1993, and the notice it had filed with the U.S. Forest Service concerned only the 10 claims listed on its certifications of exemption. The Board found those circumstances sufficient to establish that Washburn had owned only 10 claims as of the date it had filed its certification seeking the small miner exemption and vacated BLM's Decision. 133 IBLA at 296.

In the present case, the facts convince us that Strandberg owned only eight claims as of the date he filed his certifications of exemption and therefore met the small miner exemption requirements.

Therefore, 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 reversed.

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James P. Terry  
Administrative Judge

I concur.

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C. Randall Grant, Jr.  
Administrative Judge

