

CARL RIDDLE

IBLA 97-243

Decided August 31, 2001

Appeal from decision of the Arizona State Office, Bureau of Land Management, declaring a mining claim forfeited. AMC 341331.

Affirmed as modified.

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

Where a mining claim was located on July 22, 1996, payment of the initial \$100 nonrefundable maintenance fee was timely made at the time of filing the location notice on Sept. 4, 1996, since it was made within the 90-day period allowed under FLPMA. The \$100 fee due on Aug. 31, 1996, for the succeeding assessment year, or the certification of exemption in lieu thereof, was also required to be submitted at the time of filing the location notice and the initial \$100 fee. A certification of exemption for the succeeding assessment year not filed until Dec. 24, 1996, was untimely.

2. Estoppel

Reliance on the oral misstatements of a BLM employee will not support a claim of estoppel; reliance must be predicated on a crucial misstatement in an official decision.

APPEARANCES: Carl Riddle, Yuma, Arizona, pro se; Richard R. Greenfield, Esq., Office of the Field Solicitor, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Carl Riddle has appealed from the January 3, 1997, decision of the Arizona State Office, Bureau of Land Management (BLM), declaring the Sphincter #1 lode mining claim (AMC 341331) forfeited because no \$100 per claim maintenance fee or waiver certification was filed for the claim on or before August 31, 1996, for the 1996-97 assessment year.

Under 30 U.S.C. § 28f(a) (1994), the holder of an unpatented mining claim, mill site, or tunnel site was required to pay a claim maintenance fee of \$100 per claim on or before August 31 of each year for the years 1994 through 1998. Under 30 U.S.C. § 28i (1994), failure to pay the claim maintenance fee "shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law." The statute gives the Secretary discretion to waive the fee for a small miner who holds not more than 10 mining claims, mill sites, or tunnel sites, or combination thereof, on public lands and has performed assessment work required under the Mining Law of 1872. 30 U.S.C. § 28f(d)(1) (1994). BLM has implemented this statute with a regulation that requires a claimant to file "proof of the * * * conditions for exemption * * * with the proper BLM office by the August 31 immediately preceding the assessment year for which the waiver is sought." 43 CFR 3833.1-6(d)(2).

BLM's decision declared Riddle's claim forfeited less than 6 months after Riddle located it. The Sphincter #1 was located on July 22, 1996, and a copy of the location notice was duly recorded with BLM on September 4, 1996. ^{1/} With the September 4 recordation, Riddle remitted to the Department a total of \$135. Service charges and location fees accounted for \$35 ^{2/} of the remittance; a maintenance fee payment accounted for the remaining \$100.

[1] Payment of maintenance fees during the initial assessment year is addressed by the Maintenance Fee Act, 30 U.S.C. § 28f(b) (1994), as follows:

The claim maintenance fee payable * * * for any assessment year shall be paid before the commencement of the assessment year, except that for the initial assessment year in which the location is made, the locator shall pay the claim maintenance fee at the time the location notice is recorded with the Bureau.

Under the Maintenance Fee Act and its implementing regulation, 43 CFR 3833.1-5(a)(1) ^{3/}, even if a claimant files his notice of location after the September 1 deadline for a current assessment year, if he located the claim in the previous assessment year, he is required to pay a \$100

^{1/} Section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1994), requires that mining claimants file with BLM, within 90 days of the date of location, a copy of the instrument of location filed with the local recording office. Riddle timely complied with this statute.

^{2/} Departmental regulation 43 CFR 3833.1-4(a) and (b) provides for the assessment of service charges and location fees.

^{3/} That regulation provides: "The initial \$100 nonrefundable maintenance fee for the assessment year in which the mining claim or site is located shall be paid for each mining claim, mill site, or tunnel site at the time of its filing with BLM pursuant to section 314(b) of FLPMA and § 3833.1-2.

maintenance fee for the year in which the claim was located. Cf. Artemis Exploration Co., 145 IBLA 232, 234, (1998) (interpreting similar provisions of the Rental Fee Act and implementing regulations).

Riddle's September 4, 1996, filing, which included a \$100 maintenance fee and \$35 in other charges and fees, complied with this requirement. However, BLM's decision was concerned with the fact that Riddle did not either pay maintenance fees or file a small miner waiver for the assessment year which began on September 1, 1996. BLM's decision held that Riddle should have filed either the certification of exemption from payment of fees or the \$100 maintenance fee for the 1996-97 assessment year by August 31, 1996, which was prior to the date he filed the location notice for the claim. As explained below, under the circumstances presented here, appellant was not required to file the small miner certification for the 1996-97 assessment year by August 31, 1996, but he nonetheless did not comply with the Maintenance Fee Act; his claim is therefore forfeited by operation of law.

In Artemis Exploration Co., supra at 235-36 (1998), we rejected the assertion that a mining claimant is required to file a waiver certification prior to recordation of the claim. In that case, we held that a certification of exemption filed after the August 31 deadline for an upcoming assessment year is properly filed where the claim is newly located and the waiver certification is filed with the copy of the location notice within the 90-day period permitted by section 314(b) of FLPMA. Citing 43 CFR 3833.1-5(a)(1)(see n.3), we held that "[a]ppellant could properly delay filing its certification until the date payment was due, that is, the date it filed copies of its notices of location." Id. at 236.

Under the reasoning set forth in Artemis, had Riddle filed the small miner waiver certification at the time he filed the location notice, his claim would have been preserved. The waiver certification was not filed, however, until December, when the affidavit of assessment work was filed. BLM received the waiver certification for the 1996-97 assessment year on December 24, 1996, in an envelope bearing a December 23 postmark, along with an affidavit certifying that the requisite assessment work had been performed on the claim. ^{4/} Although the affidavit was timely filed, the waiver certification was not filed by "the date payment was due" under 43 CFR 3833.1-5(a)(1), and the claim is therefore forfeited.

[2] Appellant claims that he was given erroneous advice from BLM officials, who allegedly told him that if he filed the waiver exemption by

fn. 3 (continued)

If such claims or sites are located prior to an August 31, and the notice of location is properly filed within the FLPMA time frame but after August 31, then the \$100 fee that was due on August 31 for the succeeding assessment year shall be paid at the time of filing the location notice along with the initial \$100 fee."

^{4/} Under 43 U.S.C. § 1744(a) (1994), affidavits of assessment work must be filed on or before December 30.

155 IBLA 313

IBLA 97-243

the December 30 deadline for filing the affidavit of assessment work, his claim would be protected. Riddle appeals to the Board to grant him relief in the form of an estoppel against the Government.

This Board has well-established precedents governing when estoppel is applicable against the Government. See Martin Faley, 116 IBLA 398, 402 (1990); Cyprus Western Coal Co., 103 IBLA 278, 280-82 (1988); United States v. Georgia-Pacific Co., 421 F.2d 92 (9th Cir. 1970). Estoppel against the Government in matters concerning the public lands is an extraordinary remedy, and must be based upon affirmative misconduct, such as misrepresentation or concealment of material facts. United States v. Ruby Co., 588 F.2d 697, 703-04 (9th Cir. 1978); D. F. Colson, 63 IBLA 221 (1982); Arpee Jones, 61 IBLA 149 (1982). Oral misstatements by BLM officials cannot support a claim of estoppel; an appellant's reliance must be predicated on a crucial misstatement in an official written decision. Compare Leitmotif Mining Co., 124 IBLA 344, 347-48 (1992), with Martin Faley, supra. We further note that Departmental regulation 43 CFR 1810.3(c) provides that reliance on information or opinion of any officer, agent, or employee or on records maintained by land offices cannot operate to vest any right not authorized by law. Under these precedents, we find no basis in the record upon which to

grant appellant relief under a claim of estoppel.

Although we sympathize with appellant in the loss of his mining claim, the statutory provisions are self-executing, and even where extenuating circumstances are asserted, BLM and this Board are without authority to excuse lack of compliance, to extend the time for compliance, or to afford any relief from the statutory consequences. See United States v. Locke, 471 U.S. 84, 102 (1985); Lee H. and Goldie E. Rice, 128 IBLA 137, 141 (1994); Basic Rock & Sand (On Reconsideration), 110 IBLA 1 (1989).

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 as modified.

James F. Roberts
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

155 IBLA 314