



HECTOR SANTA ANNA

171 IBLA 103

Decided February 15, 2007

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IBLA 2005-210

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Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring nine mining claims forfeited by operation of law for failure to file an Affidavit of Performance of Annual Assessment Work on or before December 30, 2004, for the 2004 assessment year. AMC 30943 through AMC 30951.

Reversed.

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

When a small miner timely paid maintenance fees for his mining claims in 2003 for the 2004 assessment year, those fees were, in accordance with 30 U.S.C. § 28f(a) (2000), as amended, in lieu of both the annual labor requirements of the Mining Law of 1872, 30 U.S.C. §§ 28-28e (2000), and the related filing requirements of section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (2000), for the 2004 assessment year. Therefore, when he timely filed a waiver certification for the claims on August 30, 2004, for the 2005 assessment year beginning at noon on September 1, 2004, and ending at noon on September 1, 2005, he did not have a statutory obligation to make an annual filing under section 314(a) of FLPMA on or before December 30, 2004. The obligation imposed by 43 CFR 3835.15(a) to file a notice of intention to hold on or before the December 30th immediately following the submission of the waiver certification in such a situation is regulatory only and, therefore, eligible for cure.

APPEARANCES: Hector Santa Anna, Dover, Delaware, pro se.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Hector Santa Anna has appealed from a June 8, 2005, decision of the Arizona State Office, Bureau of Land Management (BLM), declaring nine mining claims forfeited by operation of law for failure to file an Affidavit of Performance of Annual Assessment Work (affidavit of labor) on or before December 30, 2004, for the 2004 assessment year.^{1/}

Because appellant did not have any statutory or regulatory obligation to file an affidavit of labor on or before December 30, 2004, we reverse.

Under 30 U.S.C. § 28f(a) (2000), as amended,^{2/} the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a maintenance fee for each claim or site on or before September 1 of each year for the years 2004 through 2008. See 43 CFR 3834.11(a)(2). Payment of the claim maintenance fee is in lieu of the annual labor requirements of the Mining Law of 1872, 30 U.S.C. §§ 28-28e (2000), and the related filing requirements of section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (2000), for the upcoming assessment year that begins at noon on September 1 of the year payment is due. See 30 U.S.C. § 28f(a) and (b) (2000); 43 CFR 3834.11(a).

The 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.” 30 U.S.C. § 28i (2000); see 43 CFR 3830.91(a) and 3835.92(a). Congress, however, provided the Secretary with discretion to waive the fee for a claimant who certified in writing that on the date the payment was due, the claimant and all related parties held not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands and had performed assessment work required under the Mining Law of 1872, for the preceding assessment year ending at noon on September 1 of the calendar year in which payment of the claim maintenance fee is due. 30 U.S.C. § 28f(d)(1)

^{1/} Those claims are the Esther Group #1, #2, and #3, and the Lonesome Pine #3 through Lonesome Pine #8 mining claims, serialized as AMC 30943 through AMC 30951, respectively.

^{2/} 30 U.S.C. § 28f(a) (2000) has been amended twice by Congress, specifically by the Department of the Interior and Related Agencies Appropriations Act, 2002, Pub. L. No. 107-63, 115 Stat. 414, 418-19 (2001) (requiring the payment of the claim maintenance fee on or before September 1 of each year for the years 2002 and 2003), and the Department of the Interior and Related Agencies Appropriations Act, 2004, Pub. L. No. 108-108, 117 Stat. 1241, 1245 (2003) (requiring the payment of the claim maintenance fee on or before September 1 of each year for the years 2004 through 2008).

(2000); see Audrey Bradbury, 160 IBLA 269, 273-74 (2003). BLM implemented this statute with a regulation that requires a claimant to file “BLM’s waiver certification form on or before September 1 of each assessment year for which you are seeking a waiver.” 43 CFR 3835.10(a).

Where a waiver certification is filed for an assessment year, the claimant is required by the Mining Law of 1872 to perform assessment work during that assessment year and by section 314(a) of FLPMA to file an affidavit attesting to having performed such work on or before December 30 of the calendar year in which the assessment year ends. 43 CFR 3835.31(a) and (d); see 43 CFR 3835.10(a), 3835.12, 3835.15, and 3835.16(a); Audrey Bradbury, 160 IBLA at 274-75. Failure to file an affidavit of labor results in a forfeiture of the claim. 43 CFR 3830.91(a)(7) and 3835.91; see Audrey Bradbury, 160 IBLA at 275.

[1] In this case, appellant timely paid \$900 in maintenance fees in 2003 for the nine mining claims for the 2004 assessment year beginning at noon on September 1, 2003, and ending at noon on September 1, 2004. In 2004, he timely filed a waiver certification for the nine mining claims on August 30, 2004, for the 2005 assessment year beginning at noon on September 1, 2004, and ending at noon on September 1, 2005.

In its decision, BLM declared the claims forfeited because appellant did not file an affidavit of labor on or before December 30, 2004, and, “[p]ursuant to regulations found at 43 CFR 3835.31, an affidavit of labor must have been filed on or before December 30, 2004.” (Decision at 1.)

43 CFR 3835.31(a) states “you must file your annual FLPMA documents with BLM on or before the December 30th of the calendar year in which the assessment year ends.” (Emphasis added.) However, appellant did not have an obligation to file an affidavit of labor with BLM on or before December 30, 2004.

As set forth above, the payment of an annual maintenance fee is in lieu of the assessment work requirement of the Mining Law of 1872 and the related filing requirements of section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (2000), for the assessment year for which the payment was made, i.e. in this case 2004. Because appellant paid the maintenance fees for the claim for the 2004 assessment year, and those fees were in lieu of the statutory annual labor requirement of 30 U.S.C. § 28 (2000) for that assessment year and the FLPMA filing requirement for the calendar year in which that assessment year ended, he did not have to file an affidavit of labor with BLM on or before December 30, 2004. Therefore, BLM erred in declaring the claim forfeited for failure to file an affidavit of labor with it on or before December 30, 2004, and we must reverse BLM’s decision.

On January 28, 2005, BLM received a letter from appellant and a notice of intention to hold the nine mining claims. In his letter, appellant stated: "I regret that I did not meet the deadline (30/12/04) established by the Department of the Interior regulations," citing serious medical problems that had caused him to "suffer mental and physical deterioration." He claimed that he had intended to send the notice of intention to BLM in December 2004.

Appellant was referring to 43 CFR 3835.15, which is titled: "**If I qualify as a small miner, how do I apply for a waiver if I paid the maintenance fee in the last assessment year?**" 43 CFR 3835.15(a) states that such a small miner must "[m]ake a FLPMA filing, in the form of a notice of intent to hold under §§ 3835.31 and 3835.33 of this part[,] on or before December 30th immediately following the submission of a waiver request." Therefore, as appellant acknowledged, he was required by that regulation to file a notice of intention to hold his nine claims with BLM on or December 30, 2004, the December 30th immediately following the submission of his waiver certification. That requirement, however, is a regulatory requirement and not a statutory requirement because a small miner in those circumstances does not have a FLPMA annual filing obligation.

In a recent case, Larry G. Andrus, Jr. (On Reconsideration), 169 IBLA 353, 354 (2006), involving mining claims located and recorded with BLM in August 2004, we reaffirmed the conclusion reached in Larry G. Andrus, Jr., 166 IBLA 17 (2005), that a BLM decision declaring mining claims forfeited and void by operation of law for failure to file with BLM an affidavit of labor on or before December 30, 2004, was properly reversed, because the obligation to perform assessment work for the claims, under 30 U.S.C. § 28 (2000), did not arise until the 2005 assessment year, which commenced at noon on September 1, 2004. However, we agreed with BLM on reconsideration that when its decision declared the same claims also forfeited by operation of law for failure to file a notice of intent to hold on or before December 30, 2004, that decision had to be vacated and the case remanded to allow the claimants the opportunity to submit a notice of intent to hold. The basis for that conclusion was that the requirement to file a notice of intent to hold in such circumstances is a regulatory requirement of 43 CFR 3835.31(c), not a statutory requirement. We explained that, while it is well settled that a statutory requirement may not be treated as a curable defect, a requirement imposed only by regulation is curable. 169 IBLA at 357.

The same rationale is applicable in the present case. Herein, the requirement of 43 CFR 3835.15(a) to "make a FLPMA filing, in the form of a notice of intent to hold," is a regulatory requirement, not a statutory requirement. There is no statutory requirement to file a notice of intention to hold under the circumstances of this case. The filing is required only by regulation, and appellant complied with that requirement, albeit late. Therefore, there is no reason in this case to provide notice and an opportunity to cure under 43 CFR 3830.94(a).

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 reversed.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

H. Barry Holt
Chief Administrative Judge