



LARRY BROCKMAN

185 IBLA 290

Decided April 20, 2015



United States Department of the Interior
Office of Hearings and Appeals

Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

LARRY BROCKMAN

IBLA 2014-279

Decided April 20, 2015

Appeal from an August 18, 2014, decision by the California State Office, Bureau of Land Management, declaring a mining claim forfeited and void for failure to pay a claim maintenance fee or file a maintenance fee waiver certification on or before September 3, 2013, for the 2014 assessment year. CAMC298707

Affirmed.

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

The requirement that each small miner seeking a waiver of the maintenance fee requirement file a waiver certification on or before September 1 of each calendar year the certification is due means that the certification may not be filed any earlier than during the assessment year immediately preceding the assessment year for which the waiver is sought.

APPEARANCES: Larry Brockman, Bakersfield, California, *pro se*.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Appellant Larry Brockman has appealed an August 18, 2014, decision by the California State Office of the Bureau of Land Management (BLM) declaring the Geraldine Quartz mining claim (CAMC298707) forfeited and void for failure to pay a claim maintenance fee or file a maintenance fee waiver certification (Waiver Certification) on or before September 3, 2013, for the 2014 assessment year.¹ Decision at 1. Based on the following analysis, the Board affirms BLM's decision.

¹ Because the September 1 deadline fell on a nonbusiness day, the deadline was extended to Sept. 3, 2013.

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. 30 U.S.C. § 28f(a) (2012); 43 C.F.R. § 3834.11(a)(2). Payment of the claim maintenance fee is in lieu of the assessment work requirements of the Mining Law of 1872, 30 U.S.C. §§ 28-28e (2012), 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) (2012), for the assessment year. 30 U.S.C. § 28f(a) (2012); 43 C.F.R. § 3834.11(a).

The failure to timely submit a 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 (2012); 43 C.F.R. §§ 3830.91(a)(3), 3835.92(a). Congress, however, has provided the Secretary with discretion to waive the fee for a claimant who has 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, and has performed assessment work required under the Mining Law of 1872 with respect to the mining claims for the preceding assessment year. 30 U.S.C. § 28f(d)(1) (2012); *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 C.F.R. § 3835.10(a).

In this case, BLM determined that Mr. Brockman submitted neither an annual maintenance fee nor Waiver Certification by the September 2013 due date for the 2014 assessment year. Therefore, it declared the above-referenced mining claim “forfeited (closed) and . . . null and void by operation of law.” Decision at 1.

We reviewed the record and found that it supports BLM’s decision. The record contains two Waiver Certifications for the Geraldine Quartz claim for the 2013 assessment year. BLM received the first on April 16, 2012, and the second on August 22, 2012. However, the record does not contain a Waiver Certification for the 2014 assessment year.

From the dates Mr. Brockman listed on the August 22, 2012, Waiver Certification, it appears that he may have intended that Waiver Certification to cover the 2014 assessment year. This assumption is supported by Mr. Brockman’s statement that he mistakenly “put the assessment beginning date as 2013 and the ending date as 2013” on one of his Waiver Certifications. Notice of Appeal at 1.

[1] However, both Waiver Certifications were applicable to the 2013 assessment year spanning September 2012 to September 2013, because they were filed

prior to September 1, 2012. The applicable regulations require that a claimant file “BLM’s waiver certification form on or before September 1 *of each assessment year* for which you are seeking a waiver.” 43 C.F.R. § 3835.10(a) (emphasis added). The regulations embody the intent of the Secretary of the Interior for the “filing of the certification to be an annual requirement that must be met each year the waiver is sought, and the certification may not be filed any earlier than during the assessment year immediately preceding the applicable assessment year.” *David G. Kukowski*, 169 IBLA 19, 23 (2006). Pursuant to this requirement, Mr. Brockman would have had to file a Waiver Certification after September 1, 2012, and before September 3, 2013, to have it apply to the 2014 assessment year spanning September 2013 to September 2014. Based on the record and Mr. Brockman’s appeal, it appears that Mr. Brockman attempted to file his Waiver Certification too early for the 2014 assessment year.

Unfortunately for Mr. Brockman, the failure to pay a maintenance fee or to file a Waiver Certification by the deadline is not a curable defect. *Beverly D. Glass*, 167 IBLA 388, 394 (2006). Accordingly, Mr. Brockman’s claim was forfeited when the September 2013 deadline passed without a timely filing and neither BLM nor this Board can provide relief from that forfeiture.

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 hereby affirmed.

_____/s/_____
James F. Roberts
Administrative Judge

I concur:

_____/s/_____
Eileen Jones
Chief Administrative Judge