



CARL HOLZER

185 IBLA 324

Decided May 12, 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

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IBLA 2015-62

Decided May 12, 2015

Appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring 10 mining claims forfeited and void for failure to pay maintenance fees or qualify for the small miner waiver. CMC 250357, *et al.*

Affirmed.

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

If a mining claimant fails to file the annual maintenance fee or a qualified waiver certification by September 1, the mining claims, mill sites, or tunnel sites are forfeited by operation of law. In order to qualify for a small miner waiver, a claimant and all related parties must hold no more than a total of 10 mining claims, mill sites, and tunnel sites on Federal lands nationwide on the date payment is due.

2. Estoppel--Federal Employees and Officers: Authority to Bind Government

The Board will not apply the doctrine of estoppel based upon allegations of oral misstatements; there must be reliance predicated on a crucial misstatement in an official written decision.

APPEARANCES: Carl Holzer, Denver, Colorado, *pro se.*

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Carl Holzer appeals from a November 20, 2014, decision of the Colorado State Office, Bureau of Land Management (BLM), declaring 10 unpatented lode mining

claims¹ forfeited and void by operation of law for failure to file claim maintenance fees or a valid maintenance fee waiver certification (Waiver Certification) on or before September 1, 2014, for the 2015 assessment year. For the reasons set forth below, we affirm BLM's decision.

Under 30 U.S.C. § 28f(a) (2012), the holder of an unpatented mining claim, mill site, or tunnel site must pay a claim maintenance fee for each claim or site on or before September 1 of each year. *Gary Kratochvil*, 185 IBLA 54, 55 (2014); *see* 43 C.F.R. § 3834.11(a)(2). 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.” *Gary Kratochvil*, 185 IBLA at 55 (citing 30 U.S.C. § 28i (2012); 43 C.F.R. §§ 3830.91(a), 3835.92(a)).

[1] Congress provided the Secretary with discretion to waive the fee for a claimant who certifies 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) (2012); *see also 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). If a claimant, a co-claimant, or related party submits Waiver Certifications for more than 10 claims or sites nationwide and fails to pay the maintenance fee due for each claim on or before the due date, the claims and/or sites are forfeited. 43 C.F.R. § 3835.92(d).

A “related party” is either (A) the spouse and dependent children of the claimant, or (B) “a person who controls, is controlled by, or is under common control with the claimant.” 30 U.S.C. § 28f(d)(2) (2012); 43 C.F.R. § 3830.5; *see also Gary Kratochvil*, 185 IBLA at 56. “Control” means “actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders

¹ On Enclosure 1 to the decision, BLM listed the following seven lode mining claims for Holzer as claimant: Moody Blue (CMC 251942), Lost Blue (CMC 251943), Black & Blue (CMC 252377), Blue Moon (CMC 255479), Blue Cap (CMC 277593), Black Forest (CMC 277681), and Rocky Cliffs (CMC 282249). BLM also listed the following three lode mining claims for Holzer and Robert Spomer as co-claimants: Blue Heaven (CMC 250357), Blue Earth (CMC 251194), and Deep Blue (CMC 276318).

... or any other means.” *Id.* The purpose of the related party provision is to limit the applicability of the small miner waiver. *Gary Kratochvil*, 185 IBLA at 56; *Ridge Top Mining Co.*, 175 IBLA 198, 205 (2008).

As noted, Holzer is listed as the claimant of 7 of the 10 mining claims BLM declared forfeit, and as the co-claimant of 3 additional mining claims. *See* Decision at 1; Decision’s Encl. 1 at unp. 1. On August 25, 2014, BLM received two Waiver Certifications for the 2015 assessment year for those two groups of mining claims. Decision at 1. On July 1, 2014, Holzer filed a location notice for the Geothite Ridge lode mining claim. *Id.* In its decision, BLM states that in order to qualify for the small miner waiver, “all claimants”² shall hold no more than 10 mining claims, mill sites, tunnel sites, or any combination thereof, on Federal lands in the United States. *Id.* Upon filing the Geothite Ridge claim, Holzer held an interest in 11 mining claims and therefore did not qualify for a maintenance fee waiver. *See id.* Thus, BLM properly declared the 10 claims forfeited because Holzer did not qualify for the small miner waiver and he did not pay the maintenance fees on those claims. *See id.* at 2.

On appeal, Holzer argues BLM verbally misled him with respect to the small miner waiver. He alleges that a BLM representative told him he could have more than 10 claims during the year and still file for waivers, so long as he was “down to 10” when he filed before September 1. Notice of Appeal at 1. He asserts that with that information in mind, he intended to file the Geothite Ridge claim and quitclaim another of his claims before filing the Waiver Certifications for the 2015 assessment year. He states he later spoke with another BLM employee, who reportedly told him he “could file but [he] would have to pay the maintenance fee since [his] stake date was before September 1st.” *Id.* at 1-2. He states that he asked the BLM employee if he could change his stake date, but was informed he could not. In his appeal, he admits he is responsible for knowing the laws that apply to him in BLM matters. However, he argues BLM is also responsible. He does not assert that that he quitclaimed any of his 11 claims.

[2] The Board follows the rule enunciated by the U.S. Supreme Court in *Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 384-85 (1947), that all persons dealing with the Government are presumed to have knowledge of the relevant statutes and regulations. *See, e.g., Ron Coleman Mining, Inc.*, 172 IBLA 387, 391 (2007).

² Under 30 U.S.C. § 28f(d) (2012), to qualify for a waiver, a claimant must certify that it and all related parties do not hold in the aggregate more than 10 claims. The use the phrase “all claimants” is over-broad, given that a claimant may co-own mining claims with a claimant who is not a related party but who owns more than 10 claims. Such were the facts in *Gary Kratochvil*, 185 IBLA 54.

Furthermore, estoppel against the Government in matters concerning the public lands is an extraordinary remedy, and must be based on affirmative misconduct, such as misrepresentation or concealment of material facts. *Id.* (citing *United States v. Ruby Co.*, 588 F.2d 697, 703-04 (9th Cir. 1978)). In accordance with the Board's precedent, "[o]ral misstatements cannot support a claim of estoppel; reliance must be predicated on a crucial misstatement in an official written decision." *Id.* Furthermore, the United States is not bound or estopped by the acts of its officers or agents, and a person's reliance on information or the opinion of any officer, agent or employee cannot operate to vest any right not authorized by law. 43 C.F.R. § 1810.3; *Ridge Top Mining*, 175 IBLA at 207; *Ron Coleman Mining*, 172 IBLA at 391, and cases cited.

To the extent Holzer suggests BLM should be estopped from declaring his claims forfeited and void based on allegations that he was misled by erroneous information provided by BLM employees, we see no basis for application of estoppel in this case. There is no assertion that he relied upon "a crucial misstatement in an official written decision." *Ron Coleman Mining*, 172 IBLA at 391.³

With respect to the 3 claims of which Holzer is a co-owner,⁴ he does not claim lack of control over those claims. *See Gary Kratochvil*, 185 IBLA at 57 (insufficient evidence co-claimants controlled claims); *but see Ridge Top Mining*, 175 IBLA at 205-06 (sufficient evidence to conclude parties were related). We note that he co-signed the Waiver Certifications that were filed.

In addition to the claims on appeal before the Board, Holzer also discusses 2 other claims, the Sweet Surprise (CMC 254609) and the Upper Surprise (CMC 254624), which he suggests may have a bearing on this case. He complains that in 2009, BLM voided them. However, neither of these claims are part of the appeal before the Board. He indicates he filed the "Blue Cap" claim, which is before the Board, following BLM's 2009 voidance of Sweet Surprise and Upper Surprise. His

³ In considering the BLM statement that Holzer asserts was misleading, we are not convinced. He states that he was informed he "could file but [he] would have to pay the maintenance fee since [his] stake date was before September 1st." This is an accurate statement. By filing his location notice before September 1, he would own or co-own more than 10 claims and therefore would be required to pay maintenance fees on those claims in order to comply with the statute. It appears to us that Holzer misunderstood the BLM employee's advice.

⁴ Blue Heaven (CMC 250357); Blue Earth (CMC 251194), and Deep Earth (CMC 276318).

discussion of these matters is not pertinent to the issue of whether he filed the maintenance fees for the 10 claims subject to his appeal before the Board or qualified for the small miner waiver.

Holzer does not contend he held less than 11 claims, but that BLM’s verbal advice misled him into thinking he could qualify for the small miner waiver despite holding 11 claims. Holzer has claimed nothing that would excuse him from the legal requirement to either pay the maintenance fee or submit a valid Waiver Certification for the claims. See *Christopher L. Mulliken*, 180 IBLA 60, 75-76 (2010) (failure to file either the fees or a valid Waiver Certification is not a curable defect); see also *Ridge Top Mining*, 175 IBLA at 206. BLM properly declared those claims forfeited and void by operation of law.⁵

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 affirmed.

_____/s/
James F. Roberts
Administrative Judge

I concur:

_____/s/
Eileen Jones
Chief Administrative Judge

⁵ Holzer states that he has “already refiled” on the 10 voided claims in order to protect his and his partner’s interests. Notice of Appeal at 2.