



PAUL DICKISON

186 IBLA 69

Decided August 7, 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 2015-110

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Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. ORMC 165227 and ORMC 165228.

Decision affirmed.

1. Mining Claims: Abandonment--Mining Claims: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold--Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

A claimant who files a small miner waiver certification must perform assessment work for the same assessment year for which that waiver was filed, and then file evidence of assessment work with the proper BLM office on or before December 30 following the end of that assessment year in accordance with annual filing requirements found in section 314(a) of FLPMA. This evidence of assessment work is in addition to whatever was filed the previous year to comply with the waiver requirements. Failure to file the required evidence of assessment work will result in abandonment of the mining claim.

2. Evidence: Presumptions--Evidence: Burden of Proof--Mining Claims: Rental or Claim Maintenance Fees

There is a legal presumption that government officials have properly discharged their duties and have not lost or misplaced legally significant documents filed with them and, hence, the absence of timely date-stamped documents

from the record will support a finding that the documents were not timely filed.

APPEARANCES: Paul Dickison, Stanfield, Oregon, *pro se*.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Paul Dickison (Appellant) appeals from a February 10, 2015, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring the Silver Eagle No. 1 and Silver Eagle No. 2 (ORMC 165227 and ORMC 165228) mining claims abandoned and void. BLM stated in its decision that the claims were forfeited because Appellant failed to file an affidavit of assessment work on or before December 30, 2014, for the 2014 assessment year. Based on the following analysis, we affirm BLM's decision.

The holder of an unpatented mining claim 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); *see* 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, 43 U.S.C. § 1744(a) (2012), for the upcoming assessment year. 30 U.S.C. § 28f(a) and (b) (2012); *see* 43 C.F.R. § 3834.11(a).

[1] The statute grants the Secretary of the Interior the discretion to waive the fee for a claimant who certifies in writing that, on the date the payment is due, the claimant and all related parties hold not more than 10 mining claims, mill sites, tunnel sites, or any combination thereof, on public lands (Waiver Certification). 30 U.S.C. § 28f(d) (2012). A claimant who files a Waiver Certification is required to (1) perform assessment work during the assessment year for which the waiver is granted, and (2) file an affidavit of the assessment work (Affidavit) on or before December 30 of the calendar year in which the assessment year ends. 43 C.F.R. §§ 3835.12, 3835.15, 3835.31(a); *see John J. Trautner*, 165 IBLA 265, 267 (2005); *Earl Riggs*, 165 IBLA 36, 39 (2005). As we stated in *Aubrey Bradbury*, 160 IBLA 269, 274 (2003) (internal footnote omitted):

The cardinal rule is that for each and every assessment year, either (1) maintenance fees must be paid, or (2) a small miner waiver certification must be filed and assessment work performed and documented. The fact that maintenance fees are paid, or the small miner waiver certification filed, prior to a particular assessment year, while any required assessment work must be performed during that

assessment year and documented no later than December 30 after that assessment year, makes the process somewhat complex, but does not alter the rule.

The failure to timely file an Affidavit of assessment work performed when required under the mining laws is “deemed conclusively to constitute an abandonment of the mining claim . . . by the owner,” thereby rendering the claim void. 43 U.S.C. § 1744(c) (2012); *United States v. Locke*, 471 U.S. 84, 97-100 (1985). Neither BLM nor the Board has discretion to waive the maintenance requirements or provide relief from the consequences of noncompliance. See *Carl A. Parker, Sr.*, 165 IBLA 300, 303-04 (2005), and cases cited.

Appellant filed a Waiver Certification for the mining claims at issue in the present appeal on August 14, 2013. Having filed that Waiver Certification, he was obligated to perform assessment work during the 2014 assessment year and file an Affidavit on or before December 30, 2014, to retain his claims. While the record does contain an Affidavit for the two claims, it is date stamped February 25, 2015, and attached to a certified mail envelope postmarked February 24, 2015. Both the date stamp and the postmark establish that BLM did not receive the Affidavit until well after the December 30, 2014, deadline, and there is no countervailing evidence in the record that Appellant timely filed the requisite Affidavit. Therefore, the claims became automatically forfeited when the deadline for filing passed. 43 U.S.C. § 1744(c) (2012); 43 C.F.R. § 3835.91.

We have carefully examined the record in this appeal, including Appellant’s appeal received by BLM on February 25, 2015, and his March 9, 2015, letter, received by the Board on March 12, 2015. Both letters are handwritten in script that is, in part, illegible.¹ We have endeavored to decipher both, and glean from the first letter that Appellant claims that he did send the required Affidavit and speculates that it may have been lost. In the second letter, Appellant adds that he has “a lot of money invested in the[] two claims” including “several thousand dollars in roads and maintenance over a period of years,” and was therefore unlikely to have forgotten to submit an Affidavit.

[2] As stated above, BLM’s records contain no evidence that Appellant timely filed the required Affidavit. He provides no countervailing evidence to support his assertion that he filed the required Affidavit by the applicable deadline. To the

¹ We note that the regulations governing practice before this Board require that all documents “[b]e clearly typewritten, printed, or otherwise reproduced by a process that yields legible and permanent copies” and that a document that does not comply with this requirement “may be rejected” by the Board. 43 C.F.R. § 4.401(d).

extent Appellant may be asserting that BLM may be responsible for misplacing documents, we note there is a presumption that government officials have properly discharged their duties and not lost or misplaced legally significant files. *Christopher L. Mullikin*, 180 IBLA 60, 68–69 (2010), and cases cited. Appellant has provided no evidence that would rebut this presumption and we find none in the record. Accordingly, we find no basis to reverse BLM’s decision.

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 is affirmed, and the petition for stay is denied as moot.

_____/s/
James F. Roberts
Administrative Judge

I concur:

_____/s/
Eileen Jones
Chief Administrative Judge