

LEON A. WEBSTER

IBLA 72-347

Decided September 26, 1972

Appeal from decision (AA 1034) rendered by Alaska state office Bureau of Land Management, rejecting reinstatement petition and application to purchase homesite.

Affirmed.

Alaska: Homesites -- Administrative Practice -- Withdrawals and Reservations: Effect of

A petition for reinstatement of a homesite claim will be denied where the record clearly establishes that the homesite claim settlement was initiated at a time when the land was withdrawn from appropriation.

OPINION BY MR. FISHMAN

Leon A. Webster has appealed from a decision, dated March 14, 1972, rendered by the Alaska state office of the Bureau of Land Management, denying his petition for reinstatement of his homesite claim and rejecting his application to purchase the homesite.

The appellant filed his notice of location on July 17, 1967. Because of the indefinite description, a decision issued on October 23, 1967, requesting him to verify the description offered by the Bureau of Land Management. The decision recited that if he took no action within 30 days, the case would be closed. The decision was returned "unclaimed" and the case was closed December 14, 1967. The case was properly closed.

The appellant asserts that he has placed valuable improvements on the land and should be afforded credit for his military service.

On the basis of the appellant's own showings his initial residence on the land commenced on May 26, 1969.

Rights to public land in Alaska may be acquired through settlement upon, and occupancy and improvement of, land as a homesite without prior approval of the Bureau of Land Management, but the filing of a notice of location of settlement in the appropriate land office is required in order to receive credit for any occupancy or

use of land; however, the filing does not in itself establish any rights in a settler but serves only as notice that such rights are claimed. Vernard E. Jones, 76 I.D. 133 (1969); cf. Fred J. Rand, Earl E. Cook, A-30228 (March 26, 1965). It follows that the appellant's action in filing the notice of location did not establish any rights in him to the land -- his rights, if any, commenced with his occupation of the land on May 26, 1969.

On that date, the land was in withdrawn status by Public Land Order 4582, dated January 17, 1969, and not subject to appropriation under the public land laws. See Leroy Martin, 4 IBLA 160 (1971). Such a claim must be rejected and may not be suspended to await the restoration of the land. See Ralph J. Mellin, 6 IBLA 193 (1972).

It is clear that the appellant gained no rights to the land by virtue of the filing of the notice of location or by settlement initiated while the land was withdrawn from entry. It follows that his petition for reinstatement was properly denied and his application to purchase was properly rejected, since he had no claim to the land which could be resuscitated.

Therefore, pursuant to the authority delegated to the Board of Land Appeals, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman  
Member

We concur:

Nexton Frishberg  
Chairman

Douglas E. Henriques  
Member

