



INTERIOR BOARD OF INDIAN APPEALS

K.D. McPhail, d.b.a. Macro Oil Company v. Acting Muskogee Area Director,
Bureau of Indian Affairs

18 IBIA 353 (07/06/1990)

Reconsideration denied:

19 IBIA 40 (10/24/1990)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

K. D. McPHAIL, d.b.a. MACRO OIL CO.

v.

ACTING MUSKOGEE AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 90-27-A

Decided July 6, 1990

Appeal from a cancellation of an oil and gas lease of restricted Indian land.

Vacated and remanded.

1. Indians: Leases and Permits: Cancellation or Revocation--Indians: Mineral Resources: Oil and Gas: Allotted Lands--Oil and Gas Leases: Bonds

The role of the Board of Indian Appeals in reviewing a Bureau of Indian Affairs decision increasing a bond for an oil and gas lease under 25 CFR 213.15(c) is to determine whether the decision is reasonable, that is, whether it is supported by law and substantial evidence.

2. Administrative Procedure: Administrative Record--Bureau of Indian Affairs: Administrative Appeals: Generally

When the administrative record in an appeal from a Bureau of Indian Affairs Area Director's decision is inadequate to support the decision, the decision will be vacated and the case remanded for development of an adequate record and issuance of a new decision.

APPEARANCES: K. D. McPhail, pro se; M. Sharon Blackwell, Esq., Assistant Regional Solicitor, U.S. Department of the Interior, Tulsa, Oklahoma for appellee.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant K. D. McPhail, d.b.a. Macro Oil Company, challenges an October 13, 1989, decision of the Acting Muskogee Area Director, Bureau of Indian Affairs (Area Director; BIA), cancelling Oil and Gas Lease No. 64858, Contract No. 14-20-402-1195, for failure to post an increased bond. For the reasons discussed below, the Board vacates the Area Director's decision and remands this case for further proceedings.

Background

On January 16, 1953, Rosa Weber Shull, Cherokee No. 31108, and her husband, M. L. Shull, executed an oil and gas mining lease to Bonaventure

Oil Corporation. The lease covered Shull's restricted allotment, described as the N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, the S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of sec. 12, T. 27 N., R. 13 E., Washington County, Oklahoma, containing 80 acres. It was approved by the Area Director on February 26, 1953, for "a term of 10 years from and after the approval hereof * * * and as much longer thereafter as oil and/or gas is produced in paying quantities from said land." An assignment of the lease to appellant was approved on March 6, 1984.

Section 3(a) of the lease requires appellant to "furnish such bond as may be required by the regulations of the Secretary of the Interior, with satisfactory surety, or United States bonds as surety therefor, conditioned upon compliance with the terms of this lease." Upon being assigned the lease, appellant posted a bond of \$15,000.

By special notice issued January 15, 1988, the Area Director announced:

Effective immediately, all oil and gas leases on restricted lands of the Five Civilized Tribes and the members thereof under the supervision of the Officer in Charge of the Muskogee Area Office must be covered by a surety bond in the minimum amount of \$5,000 per lease. This order is pursuant to authority under Title 25 of the Code of Federal Regulations, Part 211.6(c) and Part 213.15(c).

Increases in the amount of coverage will be required on PRODUCING LEASES. Such increase will be based on the number of wells on a lease. A \$2,500 bond is necessary for each additional well.

By letter of October 27, 1988, the Area Office advised appellant that BIA records showed there were at least 18 wells on his lease and that his \$15,000 bond was insufficient under the new requirement. Appellant was requested to submit a rider increasing his bond to \$50,000 within 30 days and informed that failure to do so would subject the lease to cancellation under 25 CFR 213.40.

Between October 1988 and October 1989, appellant attempted to secure an increased bond but was unable to do so. The record shows that he maintained contact with BIA during this time, reporting on his progress.

By letter of October 13, 1989, the Area Director informed appellant that his lease had been cancelled effective July 1, 1989, for failure to increase the bond.

Appellant's notice of appeal from this decision was received by the Board on November 14, 1989. Both appellant and appellee filed briefs.

Discussion and Conclusions

Regulations governing the leasing of restricted lands of members of the Five Civilized Tribes for mining purposes are found at 25 CFR Part 213. 25 CFR 213.15 provides in part:

(a) * * * lease bonds, except as provided in paragraph (c) of this section, shall not be less than the following amounts:

*	*	*	*	*	*
For 80 acres and less than 120 acres..... [§]1,500					
*	*	*	*	*	*

(c) The right is specifically reserved to increase the amount of bonds and the collateral security prescribed in paragraph (a) of this section in any particular case when the officer in charge deems it proper to do so.

25 CFR 213.40(a) provides:

When, in the opinion of the Secretary of the Interior, the lessee has violated any of the terms and conditions of a lease or of the applicable regulations, or if mining operations are conducted wastefully and without regard to good mining practice, the Secretary of the Interior shall have the right at any time after 30 days' notice to the lessee specifying the terms and conditions violated, and after a hearing, if the lessee shall so request within 30 days after issuance of the notice, to declare such lease null and void, and the lessor shall then be entitled and authorized to take immediate possession of the land.

Appellant states on appeal:

[M]y real objection to the new bonding requirement is that it isn't fair. I feel that I am being punished for an oversight on the part of B.I.A. - that being the realization that plugging costs escalate as time passes, just as the cost of everything else goes up with the passage of time. There was nothing said about the fact that B.I.A could or would raise my bonding requirement after I had owned and operated the lease for several years.

(Appellant's Statement of Reasons at 8). Appellant requests that the Area Director's decision be reversed and that his bond of \$15,000 be judged sufficient to satisfy the BIA security requirement.

The Area Director contends that he acted within his authority under 25 CFR 213.15(c) in requiring appellant to post the increased bond and that a bond amount of \$50,000 was reasonable in light of the nature and extent of appellant's operations on the lease. He argues that "[t]he decision was arrived at after due consideration of all factors in the present oil and gas industry and reflects the trustee responsibility imposed upon the Secretary by federal law" (Appellee's Brief at 3).

[1] In GMG Oil & Gas Corp. v. Muskogee Area Director, 18 IBIA 187, 190-91 (1990), the Board stated:

A BIA decision increasing a bond under 25 CFR 213.15(c) is a decision requiring the exercise of both expertise and judgment. * * * [I]t is the Board's role to determine whether the bond increase is reasonable, that is, whether it is supported by law and by substantial evidence. If it is reasonable, the Board will not substitute its judgment for BIA's. An increase which is supported by evidence in the administrative record will not be overturned unless it is shown to be unreasonable. The burden is on an appellant to make such a showing. Cf. Pardee Petroleum Corp., 98 IBLA 20 (1987) (burden is on an appellant to show error in a Bureau of Land Management bond increase for Federal oil and gas operations).

The Board found in that case that, although the appellant had done little to demonstrate that the bond increase was unreasonable, there was nothing in the administrative record to show the reason for the increase. The Board noted that BIA has a responsibility to show some basis for its decision to increase appellant's bond. 1/

Similarly, there is nothing in the administrative record here to show why appellant's bond was increased. As in GMG Oil & Gas Corp., the Board is unable to conclude that the Area Director's decision is supported by substantial evidence.

[2] Where the administrative record furnished to the Board does not support the decision, the decision must be vacated and the case remanded for development of an adequate record and issuance of a new decision. 2/

1/ Cf. Bien Mur Indian Market Center v. Deputy Assistant Secretary Indian Affairs (Operations), 14 IBIA 231, 236 (1986), holding that, where BIA "provided no justification for the rental rate actually imposed, that rate is not supported by substantial evidence." See also Bowen v. American Hospital Association, 476 U.S. 610, 626-27 (1986), in which the Supreme Court noted the responsibility of a Federal agency to "explain the rationale and factual basis for its decision."

2/ The Board notes that the record in support of a new decision must support an increase in appellant's bond. After the Board issued its decision in GMG Oil & Gas Corp., it received a memorandum concerning that case from the Area Director. The memorandum, dated Apr. 27, 1990, stated:

"We thought it appropriate to clarify the expertise and judgment used in the decision that was made.

"The oil industry in the State of Oklahoma is, at best, in a recovering mode. We found it necessary to increase our bonding requirements due to so many abandoned oil leases with unplugged wells. In an attempt to display impartiality, and protect our leaseholds, we imposed the same requirements on all of our lessees in an all-inclusive manner."

Under 25 CFR 213.15(c), the Area Director is authorized in increase a bond "in any particular case when [he] deems it proper to do so." In exercise of that authority, he must give reasons for the bond increase in the "particular case" before him. A statement concerning the oil industry in Oklahoma, or Oklahoma Indian leases in general, is insufficient to support a decision under section 213.15(c) to increase a particular bond.

GMG Oil & Gas Corp., 18 IBIA at 191; Atencio v. Albuquerque Area Director, 18 IBIA 126 (1990); Plain Feather v. Acting Billings Area Director, 18 IBIA 26 (1989).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Muskogee Area Director's August 21, 1989, decision is vacated, and this case is remanded to him for further proceedings in accordance with this opinion.

//original signed

Anita Vogt
Administrative Judge

I concur:

//original signed

Kathryn A. Lynn
Chief Administrative Judge