PHILLIP STIMATZE

IBLA 75-647 Decided November 10, 1975

Appeal from decision of the Montana State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease M-24957-J.

Affirmed.

1. Oil and Gas Leases: Reinstatement

Failure to pay advance rental on or before the anniversary date of an oil and gas lease may be justifiable only if the reason for such failure is proximate in time to the anniversary date and may reasonably be considered to be the proximate cause of the failure to timely submit the payment.

APPEARANCES: Phillip Stimatze, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Phillip Stimatze appeals from the decision dated June 3, 1975, of the Montana State Office, Bureau of Land Management, denying his petition for reinstatement of his oil and gas lease M-24957-J. Appellant's lease terminated by operation of law under 30 U.S.C. § 188(b) (1970) when he failed to timely submit the advance rental payment due May 1, 1975, the anniversary date of his lease.

Appellant submitted his rental payment on May 8, 1975. Upon being informed that his lease had terminated, he timely petitioned for reinstatement under 30 U.S.C. § 188(c) (1970). In his petition appellant stated that he was called out of town due to the illness of his father and did not return until May 5, 1975, at which time he mailed his rental payment to the State Office.

[1] Reinstatement of a terminated oil and gas lease is permitted by 30 U.S.C. § 188(c) (1970) if the failure to timely submit the rental payment is "either justifiable or not due to a lack of reasonable diligence on the part of the lessee." Illness or

death in the family may be considered a justifiable excuse for not exercising reasonable diligence. However, such illness or death must be proximate in time to the anniversary date and be reasonably considered the proximate cause of the failure to timely submit the rental payment. M. J. Harvey, Jr., 19 IBLA 230, 232-33 (1975); William L. McCullough, 18 IBLA 97, 98-99 (1974); Louis Samuel, 8 IBLA 268, 274 (1972).

Subsequent to filing his appeal, appellant was asked by the Board to further elaborate on the nature and timing of his father's illness. He has not done so. Appellant's statement concerning his father's illness does not provide sufficient information on which to determine that his failure to timely submit his rental payment was justifiable. We must deny his appeal.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge