WILLIS L. LAWTON

IBLA 78-199 Decided July 31, 1978

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting oil and gas lease offer U 38815 for failure to make timely payment of first year's rental.

Reversed.

1. Evidence: Generally -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Rentals

Where the official record of an oil and gas lease offer contains no indication either of when BLM received payment of first-year rental on the lease or of when BLM believes it received this payment, and where the only indication of when the payment was made is a photocopy, submitted on appeal, of a portion of an unidentified, undated receipt which does not bear either the offeror's name or the serial number of his offer or the control number of the document, and which is not included in the official record, BLM's decision rejecting the offer under 43 CFR 3112.4-1 for failure to make this payment within 15 days of the offeror's receipt of notice that the rental was due will be reversed.

APPEARANCES: Lynn J. Farnworth, Esq., Moscow, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Willis L. Lawton (appellant) filed a drawing entry card for parcel number UT-40, which was drawn with first priority in the November 1977 drawing for simultaneous oil and gas offers by the Utah State Office, Bureau of Land Management (BLM). On November 22, 1977, after a protest against the issuance of this lease to Lawton had been dismissed, BLM sent him a notice of first year's rental due

on the offer, which was designated as number U 38815. He received the notice on November 30, 1977, and, some time thereafter, submitted a check to BLM for this rental.

On January 6, 1978, BLM sent Lawton's rental check back to him, along with a notice of return of remittance which indicated that it had not received this payment timely, citing 43 CFR 3112.4-1. This notice was tantamount to a decision by BLM rejecting Lawton's offer, as disqualification of an offer is mandated by 43 CFR 3112.4-1 where the offeror fails to make payment of his first year's rental within 15 days after he receives notice that payment is due. Lawton has appealed from the issuance of this notice of return of remittance. We reverse.

[1] Appellant received notice of rental due on November 30, 1977, and, per 43 CFR 3112.4-1, had until December 15, 1977, to make payment. He has alleged that he sent the rental to BLM on December 8, 1977, from Bellevue, Washington. If this is so, it appears unlikely that the payment would have arrived in Utah after December 15.

The official record in this dispute, as transmitted to this Board by BLM, contains no indication whatever of when BLM received appellant's payment of first-year rental. There is no evidence whatever to show when the payment was mailed or when it arrived at BLM, such as the post-marked envelope in which it was mailed, a date-stamped transmittal, or dated accounting information identified as relevant to this payment. 1/ Moreover, there is not even an indication in the record of when BLM believed it received the payment, as there would usually be where it issues a decision rejecting an offer because payment was not timely submitted.

On April 5, 1978, in response to a request for substantiation, BLM filed with this Board a photocopy of a fragment of what it alleged to be "the official receipt showing that the first year's rental payment for oil and gas offer U-38815 was received December 19, 1977." The original document from which this partial photocopy was made is not in the official record of this lease offer as transmitted to this Board by BLM, and BLM has offered no explanation of why it was not included in the case record. In any event, this partial photocopy of a document does not contain enough information to demonstrate that BLM in fact received appellant's payment on December 19, 1977. It does

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1/ The official record contains Lawton's copy of the notice of rental due, dated November 22, 1977, which he apparently submitted to BLM along with the rental payment, but this document bears no date stamp or other indication of when BLM received it. There is an accounting advice copy in the file, but it is for appellant's resubmission of the check along with his notice of appeal on January 23, 1978, as part of an attempt to have his lease "reinstated."

not bear appellant's name or the serial number of his offer, or does it show the accounting advice number. At most, it shows only that an accounting entry of $400 was made on December 19, 1977, for some undisclosed purpose. It is unsigned and undated. By its own terms, it is not to be accepted as an official receipt.

BLM admits that this is the only record which it has to fix the date on which it received appellant's rental payment. We conclude that it does not afford an adequate basis to support BLM's finding that appellant's payment was untimely, and that, in view of the total absence of any other evidence countervailing appellant's assertions, we cannot affirm BLM's decision rejecting his offer.

Therefore, 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 reversed.

Edward W. Stuebing
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joseph W. Goss
Administrative Judge