

CHEVRON U.S.A. INC.

IBLA 90-425

Decided July 27, 1993

Appeal from decisions of the Director, Minerals Management Service, denying refund requests. MMS-89-0304-OCS and MMS-89-0305-OCS.

Affirmed.

1. Evidence: Generally--Outer Continental Shelf Lands Act: Generally--Outer Continental Shelf Lands Act: Refunds

When a royalty payor alleged that a request for a refund under sec. 10 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1339 (1988), was timely filed with the proper MMS office, but failed to corroborate timely receipt by MMS of the request by other evidence, MMS properly found that the agency's date stamp on the refund request proved that it was late.

APPEARANCES: Margaret E. Broussard, Esq., San Francisco, California, for appellant; Howard W. Chalker, Esq., Geoffrey Heath, Esq., and Peter J. Schaumberg, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Chevron U.S.A. Inc. (Chevron) has appealed from two April 26, 1990, decisions by the Director, Minerals Management Service (MMS), that denied in part requests for refunds of royalty overpayments on several offshore oil and gas leases. MMS denied the appeals because it determined that Chevron had filed the royalty refund requests after expiration of the 2-year period established by section 10(a) of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1339(a) (1988).

On July 3, 1988, Chevron made a request for refund of royalty overpayments on various Outer Continental Shelf (OCS) leases in the amount of \$21,617.82. By letter dated July 24, 1989, the Chief, Lakewood Section, Lessee Contact Branch, Royalty Management Program (RMP), informed Chevron that it was entitled to a refund of \$20,477.49 for excess royalties paid. The Chief explained that the difference between the amount requested and the amount allowed was \$1,140.33 because the request for refund for the overpayment of royalty on OCS leases 055-000820-0 and 055-000459-0 was made

after expiration of the 2-year authorization for refunds provided by section 10(a) of OCSLA, 43 U.S.C. § 1339(a) (1988). Also on July 3, 1988, Chevron made a nearly identical request for refund of royalty overpayments on certain OCS leases in the amount of \$12,539.48. The Chief, Lakewood Section, Lessee Contact Branch, RMP, responded by letter dated July 31, 1989, informing Chevron that it was entitled to a refund of \$6,966.26, for excess royalties paid. Again, the Chief explained that the difference between the amount requested and the amount allowed was \$5,573.22 and was due to the fact that the request for refund of overpayments of royalty on OCS leases 055-000456-0 and 055-000457-0 was received by MMS more than 2 years after the payment date.

On September 1, 1989, Chevron appealed the Chief's decisions partially denying its refund requests. Chevron informed MMS that it had contacted the U.S. Postal Service (Postal Service) in Denver, Colorado, seeking the returned "green card" PS Form 3811 to determine the actual dates the refund request letters were delivered to the MMS Royalty Management Program. Chevron stated that the Postal Service was unable to produce evidence of the receipt date. Chevron contended that "[i]n the absence of such evidence, it must be presumed that since the letters were timely mailed, it is unreasonable to assume that the letters took six days to reach the MMS." Chevron concluded that in the absence of proof of when the letters were actually received, it must be assumed that the letters were timely received by Friday, June 30, 1989.

In virtually identical decisions dated April 26, 1990, the Director, MMS, denied Chevron's appeals, thereby affirming the RMP decisions partially denying the royalty refund requests. In his decisions the Director pointed out that it appeared that Chevron made the payments which it claims to be in excess of the amount due on June 30, 1987. He found that Chevron's refund requests were date-stamped as received by RMP on July 3, 1989. The Director referred to section 10 of OCSLA which provides that refund of amounts claimed to be in excess may not be paid if the request for such refund is made more than 2 years from the date of payment. Citing the MMS Oil and Gas Payor Handbook, Volume I, Chapter I, section 9, he stated that documents are date-stamped when received by RMP on the day documents are received, if such receipt occurs before 4 p.m. mountain time. He concluded that administrative officials are presumed to have properly discharged their duties and not lost or misplaced legally significant documents submitted for filing. Holding that the deposit of a document in the mail does not constitute delivery and therefore does not constitute a filing, he found that a request for refund is made when it is delivered to and received by the proper MMS office.

On appeal to this Board, Chevron has elaborated on the arguments made to the Director, reiterating that the refund requests were mailed to the appropriate MMS office 6 days before the 2-year statute of limitations expired. Chevron argues that although MMS alleges that it did not receive the requests until 1 day after the time allowed by statute had expired, MMS was unable to prove that it did not receive the requests until after the

date expired. Chevron explains that they were sent certified mail through the Postal Service, but that the Postal Service reported there was no record of delivery.

Alternatively, Chevron asserts that MMS is not required to strictly interpret section 10 of OCSLA. Chevron argues by analogy that MMS liberally interprets the 6-year statute of limitation on commencement of judicial actions appearing at 28 U.S.C. § 2415 (1988) for the issuance of underpayment claims against lessees. Chevron urges that a reasonable interpretation of OCSLA would permit MMS to allow the lessee the same degree of leeway it allows itself in finding underpayments. In a similar vein, Chevron also contends that the MMS interpretation of section 10 which allows overpayment to be used as an offset to any overpayment discovered on the lease during an audit should allow the lessee to recoup overpayments.

In answer to Chevron, MMS recites that it did not receive Chevron's refund requests until July 3, 1989, after the expiration of the 2-year period for refund requests established by section 10 of OCSLA. MMS emphasizes that the term "filed" has been interpreted by the federal courts as well as this Board to mean the date on which the proper office receives a document, not the date on which it is mailed. Therefore, MMS contends that the Board should interpret the word "file" in section 10 to mean that a lessee's refund request must be received by MMS within the 2-year period. MMS concludes that Chevron should not be allowed to recover the overpayments of royalties because Chevron did not file refund requests within 2 years of the tender of payment. MMS dismisses Chevron's arguments by analogy to limitations on judicial actions and audit procedures as irrelevant to this appeal.

[1] Section 10(a) of OCSLA, 43 U.S.C. § 1339(a) (1988), authorizes reimbursement of overpayments "if a request for repayment of such excess is filed with the Secretary within two years after the making of the payment." The scope of this authority and the limitations imposed upon the Department's exercise thereof were explored both by this Board in Shell Offshore, Inc., 96 IBLA 149, 94 I.D. 69 (1987), aff'd, 923 F.2d 930 (Fed. Cir. 1991), cert. denied sub nom. Phillips Petroleum v. United States, 60 U.S.L.W. 3217, 3247 (U.S. Oct. 7, 1991), and by Solicitor Coldiron in Refunds and Credits Under the Outer Continental Shelf Lands Act, M-36942, 88 I.D. 1090 (1981). Both the Board and the Solicitor concluded (and the Federal courts agreed) that the language of OCSLA section 10 must be strictly interpreted.

The issue in this case is whether Chevron's requests for refunds were filed with MMS within 2 years after payment was made within the meaning of section 10(a) of OCSLA. Departmental case law makes it clear that a document is not filed with MMS until it is received by MMS. Conoco, Inc., 115 IBLA 105, 106 n.1 (1990). In MMS appeals cases, the Board has held that a notice of appeal must be filed in the office of the official issuing the order or decision within the time required by 30 CFR 290.3(a). See Texaco, Inc., 51 IBLA 243, 245 (1980); Union Oil of California, 48 IBLA 145, 146 (1980); and Mesa Petroleum Co., 44 IBLA 165, 166 (1979).

Chevron asserts that the requests for refund were mailed 6 days before the expiration of the 2-year period. The return receipt card submitted by Chevron establishes the date of mailing as June 27, 1989. However, such evidence does not benefit Chevron. "Filed" means the date on which the document is received in the proper MMS office, not the date on which it was mailed. See Mesa Petroleum Co., supra at 167. One choosing the means of delivery of a document must accept the responsibility for and bear the consequences of delay or nondelivery. See Conoco, Inc. (On Reconsideration), 113 IBLA 243, 249 (1990), and cases cited therein.

The MMS date stamp on Chevron's refund request is proof of the time of filing the request. As a general rule, there is a presumption of regularity that supports the official acts of public officers in the proper discharge of their official duties. See United States v. Chemical Foundation, 272 U.S. 1, 15 (1926). The presumption of regularity, of course, is rebuttable. The Board has, in a number of cases dealing with missing documents, held that an appellant has overcome the presumption of regularity and established that it was "more probable than not" that the missing document was timely filed. See, e.g., Richard A. Willers, 101 IBLA 106 (1988); Elizabeth D. Anne, 66 IBLA 126 (1982). A critical element in such cases has been the submission of evidence which can fairly be said to make the conclusion "more probable than not" that the missing document was, in fact, timely filed. Richard A. Willers, supra at 108. The same reasoning applies here. Chevron has not submitted any evidence to show that the requests were timely filed, but infers that because the documents were sent certified 6 days before the expiration of the 2-year period they ought to have been delivered timely. This conclusion is not, however, supported by other evidence tending to show that any such events took place. There is, as a consequence, no evidence in the instant case to overcome the presumption of regularity and establish that the required requests were timely filed with MMS.

Chevron asserts that MMS should not strictly interpret the 2-year time limitation imposed by section 10 because MMS has not held to a strict interpretation of the 6-year period required by 28 U.S.C. § 2415 (1988) when it issues underpayment claims against lessees. The 6-year statute of limitations is not, however, at issue here. Nor is section 10 similar to statutes imposing limitations on commencement of judicial actions by the United States. Instead it is, as we held in Shell Offshore, Inc., supra, a statute that empowers the Department to make a certain type of refund for a specified time. Because the authority of the Department to make such refunds is limited to a specific time by the statute, it has not been possible to enlarge the authorized payment period by administrative action alone. See Shell Offshore, Inc., 96 IBLA at 161-66, 94 I.D. at 76-79.

Chevron contends that since MMS allows overpayment to be offset against underpayment, these refund requests should be allowed. In Shell Oil Co., 52 IBLA 74 (1981), this Board held that when royalty payments on an oil and gas lease are audited, royalty overpayments made during the period covered by the audit could be offset against underpayments during the same audit period, even if the overpayments were made more than 2 years before audit.

But no audit was involved in this case, nor has Chevron explained how this unrelated circumstance might authorize the Department to avoid the clear limitation on its authority established by section 10.

We therefore conclude that timely requests for refund were not submitted by Chevron for overpayments of royalty made for the leases here at issue. Because the statute authorizing such refunds must be strictly construed we are unable, for reasons argued by Chevron, to enlarge the time within which such refund requests may be made, even for a single day.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Franklin D. Arness
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge