

JAMES E. FOWLER
AND
FRANCES T. FOWLER

IBLA 72-238
72-239

Decided December 12, 1972

Appeal from decisions (ES 3929 (Mississippi), et al.) of Eastern States Land Office, Bureau of Land Management, requiring additional evidence of timely tender of rental as a basis for reinstatement and holding oil and gas leases to have terminated.

Affirmed as modified.

Accounts: Payments -- Oil and Gas Leases: Generally -- Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals -- Oil and Gas Leases: Termination

Failure of a lessee to pay rental on or before the anniversary date of a lease, on which there is no well capable of producing oil or gas in paying quantities, results in the automatic termination of the lease by operation of law. A lease so terminated may be reinstated only if the terms and conditions of the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188 (1970) have been satisfied.

Act of May 12, 1970 -- Administrative Practice -- Applications and Entries: Generally -- Oil and Gas Leases: Generally -- Oil and Gas Leases: Rentals -- Oil and Gas Leases: Reinstatement

An applicant asserting a claim to benefits of an Act of Congress has the burden of furnishing sufficient evidence of his entitlement thereto. Failure to submit such evidence will result in the denial of his claim. Where an applicant seeks reinstatement of his oil and gas lease under the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188 (1970), he has the burden of establishing by persuasive evidence that the failure to pay his full rental timely was either justifiable or not due to a lack of reasonable diligence. Mere assertions, unsupported by any probative evidence, are not sufficient.

APPEARANCES: James E. Fowler and Frances T. Fowler, pro se.

OPINION BY MR. FISHMAN

Rental for oil and gas leases ES 2896 (Louisiana), BLMA 077588 (Mississippi), ES 01113 (Mississippi), and ES 3929 (Mississippi) held by appellants individually, was due and payable July 1, 1970.

With respect to ES 3929, by letter dated July 6, 1970, and received July 8, 1970, in the Land Office, the lessee advised:

Please find enclosed notice of payment due, along with my check dated June 29 to cover rental. The delay in your receiving this was caused by a typographical error in addressing the original to your office.

I sincerely hope that this payment can be accepted by you under the terms of the recent law.

Sincerely yours,
(sgd) Frances T. Fowler

A virtually identical letter was also received on the same date from James E. Fowler with respect to the other leases in issue.

The Land Office decisions of December 8, 1971, to which the appeals are directed, (1) pointed out that since rental was not timely paid, i.e., on or before July 1, 1970, the leases terminated by operation of law. 30 U.S.C. § 188(b) (1970); (2) recited that the Act of May 12, 1970, 84 Stat. 206, and the regulation thereunder, 43 CFR Subpart 3108, authorize reinstatement of leases in certain circumstances; and (3) called upon the appellants "to furnish within 15 days from receipt of this decision the envelope referred to in * * * [the] letter[s] of July 6, 1970, in which the remittance[s] * * * [were] transmitted to this office."

In response to those decisions, the lessees filed documents, each styled an "appeal," reciting that compliance with the request for the envelope

* * * is impossible. I did not keep this envelope. The envelope was addressed as usual except the typist mistake Silver Springs (sic), Mississippi, instead of Silver Springs, Maryland. This was an honest mistake and the only reason the request to accept the rental in 1970 was made.

The 1971 Advance Rentals were also received and accepted by your office.

We now turn to consideration of the decision appealed from. It is clear that the failure to pay the rentals due on or before the anniversary date of the leases resulted in their automatic termination. Robert P. Good, 6 IBLA 233 (1972). Cf. Husky Oil Company of Delaware, Depco Inc., 5 IBLA 7, 79 I.D. 17 (1972). Such leases may not be reinstated unless the amendatory provisions of the 1970 Act and the regulations thereunder, can properly be invoked. Robert P. Good, supra.

43 CFR 3108.2-1(c)(2) recites:

(2) The burden of showing that the failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence will be on the lessee. Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. The authorized officer may require evidence, such as post office receipts, of the time of sending or delivery of payments.

The regulation is consonant with a long established principle of public land law, i.e., an applicant asserting a claim to receive the benefits of an Act of Congress had the burden of furnishing sufficient evidence of his qualifications to receive such benefits. Van Ragsdale, I.G.D. 61 (1938).

One of the requirements for favorable consideration of a petition for reinstatement of an oil and gas lease is that the petitioner show "to the satisfaction of the Secretary of the Interior that such failure [to pay the full amount timely] was either justifiable or not due to a lack of reasonable diligence on the part of the lessee * * *." 30 U.S.C. § 188(c) (1970). See 43 CFR 3108.2-1(c)(1)(ii). We find that reasonable diligence has not been demonstrated.

In the case at bar, we have only the bare assertion that the rental was mailed timely, unsupported by any evidence. 1/ It

1/ Although the Land Office decisions required that the misaddressed envelope be submitted, any credible evidence in support of the allegation would have been considered.

follows that the petitions for reinstatement, 2/ implicit in the appeals, must be denied, since appellants have not demonstrated their right thereto.

Appellants state that "the 1971 Advance Rentals were also received and accepted by your [the Eastern States Land] office," suggesting that the previous non-compliance was waived. The receipt of the 1971 rentals by the Land Office and their being put in a suspense status pending adjudication of the appeals in no wise constituted an acceptance of the rentals. In any event, a land office action, if in contravention of an applicable law or regulation, cannot create any rights in a party. James W. McDade, 2 IBLA 373 (1971). See I. M. and Robert L. Clausen, 7 IBLA 286 (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is affirmed and the applications for reinstatement of the leases are denied.

Frederick Fishman, Member

We concur:

Douglas F. Henriques, Member

Edward W. Stuebing, Member.

2/ Since the holding in this case is determinative of disposition of petitions for reinstatement, no useful purpose would be served by non-recognition of this facet.

