

MRS. CHARLES H. BLAKE

IBLA 72-303

Decided April 2, 1973

Appeal from a decision of the Utah State Office, denying reinstatement of oil and gas lease U-0147941-T, terminated by operation of law for failure to pay the annual rental on or prior to the anniversary date.

Reversed.

Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

Failure to timely pay the advance rental on an oil and gas lease will be deemed "justifiable" where the failure is the result of sufficiently extenuating circumstances which affected the lessee's actions.

APPEARANCES: Mrs. Charles H. Blake, pro se.

OPINION BY MR. HENRIQUES

Mrs. Charles H. Blake appeals from a decision of the Utah State Office, dated January 21, 1972, denying reinstatement of oil and gas lease U-0147941-T, terminated by operation of law for failure to pay the annual rental on or prior to the anniversary date.

Under section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188 (1970), advance rental payment for the lease must be received on or prior to the anniversary date or the lease terminates. In the case at bar, payment was due on or before January 1, 1972. Since January 1 was a Saturday, payment could have been received on January 3, the next working day, and be treated as timely filed. Payment, however, was not received until January 11, 1972. Thus, the lease terminated by operation of law. Under the provisions of the Act of May 12, 1970, 84 Stat. 206, (30 U.S.C. § 188(c) (1970)) the lease may be reinstated provided the lessee pays or tenders the rental within 20 days and petitions for reinstatement within 15 days after receipt of a Notice of Termination and shows that the failure to timely pay was

either justifiable or not due to a lack of reasonable diligence. The envelope containing the payment was postmarked on January 11, 1972, in Everett, Washington, eight days after the final date on which it could have been timely received. Thus, it cannot be said that reasonable diligence was exercised, see Louis Samuel, 8 IBLA 268 (1972); 43 CFR 3108.2-1(c)(2) (1972); and the State Office correctly so held.

The State Office however, did not examine the question of whether the failure to pay timely was "justifiable." A reading of the State Office decision clearly shows that it was their belief that the Act of May 12, 1972, supra, provided only one ground for reinstatement. Subsequent to the decision rendered by the State Office this Board, in Louis Samuel, supra, examined the Act of May 12, 1972, supra, and rejected the position that "justifiable" and "not due to a lack of reasonable diligence" were merely restatements of the same principle. Rather, we held that independent of a showing of reasonable diligence, a petition for reinstatement may be granted if it is shown that the failure to pay timely was the result of sufficiently extenuating circumstances which affected the lessee's actions. See Louis Samuel, supra; R. G. Price, 8 IBLA 290 (1972); John Rusiniak, 10 IBLA 74 (1973).

In support of her appeal, the appellant has given the following information: her husband, Charles H. Blake, who had purchased the subject lease in 1966, died on June 28, 1971. Prior to his death, he had made all of the required rental payments. On November 10, 1971, appellant entered a hospital and underwent major surgery. Subsequent thereto, she has been weak and unable properly to attend to her late husband's business affairs (she is 73 years of age). She was not aware of her liability to pay rental on this lease until January 5, 1972, at which time she received a courtesy notice. Without delay, she then transmitted payment of the indicated amount. We note that the State Office did not have the benefit of this information when it made its decision denying reinstatement.

This Board has recently held that the allegation of failure to receive a courtesy notice, without more, is insufficient to make the failure to pay rental timely "justifiable." See Louis J. Patla, 10 IBLA 127 (1973). There are, however, other compelling circumstances present here making the failure to pay timely justifiable. Considering all the circumstances of the case, we believe that it was error for the State Office to refuse to grant the petition for reinstatement.

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, and the case file is remanded to the Bureau of Land Management for appropriate action consistent herewith.

Douglas E. Henriques, Member

We concur:

Joan B. Thompson, Member

Martin Ritvo, Member.

