

R. H. PARKS

IBLA 73-50

Decided April 17, 1973

Appeal from a Bureau of Land Management Montana State Office decision denying a petition for reinstatement of oil and gas lease Montana 15366.

Affirmed.

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

It is proper to deny a petition for reinstatement of an oil and gas lease terminated for failure to pay advance rental timely where the petitioner has not shown that his failure to pay the rental fee on or before the anniversary date of the lease was justifiable or not due to lack of reasonable diligence.

APPEARANCES: R. H. Parks, pro se.

OPINION BY MR. RITVO

R. H. Parks has appealed to the Secretary of the Interior from a decision dated June 22, 1972, by the Bureau of Land Management, Billings, Montana, denying his petition for reinstatement of oil and gas lease Montana 15366 terminated for failure to make timely rental payment as required by the lease terms.

Parks seeks reinstatement of his oil and gas lease under section 31 of the Mineral Leasing Act, as amended by the Act of May 12, 1970, 30 U.S.C. § 188 (1970). Under the lease terms, Parks' payment was due on June 1, 1972. The payment, however, was postmarked June 6, 1972, and arrived at the Bureau of Land Management Office on June 8, 1972. Since Parks had failed to submit his annual rental payment by the anniversary date of his lease, the Bureau of Land Management sent him a notice that his lease was canceled.

Under the provisions of the Act of July 29, 1954, 68 Stat. 585, section 31 of the Mineral Leasing Act, supra, was amended to require automatic termination of oil and gas leases, on which there was no well capable of producing oil and gas in paying quantities, when the lessee failed to make the annual rental payment on or before

the anniversary date of his lease. Under the Act of May 12, 1970, supra, the Secretary, or his delegate, has discretionary authority to reinstate the lease when the lessee shows that he used reasonable diligence in submitting the payment or that the delay was caused by justifiable circumstances. See also 43 CFR 3108.2-1(c).

Parks appealed the termination notice but admitted that his failure to make timely payment was merely an oversight due to confusion caused by visiting relatives. The State Office denied Parks' request for reinstatement stating that the reasons given in Parks' appeal did not show that reasonable diligence had been exercised in submission of the rental payment.

In a recent decision, Louis Samuel, 8 IBLA 268 (1972), this Board discussed at length the history and congressional intent of the 1970 amendment to section 31 of the Mineral Leasing Act, supra. The amendment provides for reinstatement if the lessee can show to the satisfaction of the Secretary that he used reasonable diligence or that the delay was justifiable. 1/

The failure to make a timely payment because of the distraction caused by visiting relatives cannot be construed as justifiable or not due to lack of reasonable diligence.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Montana State Office is affirmed.

Martin Ritvo, Member

We concur:

Anne Poindexter Lewis, Member

Joan B. Thompson.

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1/ The departmental regulations, 43 CFR 3108.2-1(c)(2) place the burden of proof on the lessee:  
"(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."

