

FREDERICK R. ALLEN

IBLA 73-118

Decided May 8, 1973

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer M 22371.

Reversed.

Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Rentals -- Accounts: Fees and Commissions -- Accounts: Payments

The regulation requiring that advance rental payment and filing fee must accompany an oil and gas lease offer is satisfied when the offeror properly submits his check for the filing fee with his offer, but such check is erroneously dishonored by the drawee bank and returned to the State Office.

APPEARANCES: Frederick R. Allen, pro se.

OPINION BY MR. STUEBING

Frederick R. Allen has appealed from the decision of the Montana State Office, dated August 17, 1972, rejecting his noncompetitive oil and gas lease offer filed pursuant to the Act of February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C. §§ 181 et seq. (1970). The State Office rejected the lease offer because the check in payment of the filing fee submitted with the offer had been returned to the Land Office by the bank because of insufficient funds.

Appellant filed a simultaneous oil and gas lease offer for Parcel 15 as identified in the July 1972 listing of lands available for simultaneous filing. He accompanied this filing with a personal check in the amount of \$10 to cover the filing fee. His offer was successfully drawn for Parcel 15 and given Serial No. M 22371. On August 4, 1972, the State Office was notified that appellant's filing fee check has been returned by his bank because of insufficient funds. On August 17, 1972, the State Office rejected the lease offer under the authority of 43 CFR 3112.2-1(2). This regulation requires that each entry card must be accompanied by a separate remittance covering the filing fee of \$10 and the first

year's advance rental. The State Office held that an uncollectible check cannot be considered payment.

On appeal Allen asserts that he had sufficient funds on deposit with the Security Pacific National Bank on the date of the filing to cover the check and that the bank erred in returning it as uncollectible. The file in this case contains a letter from the bank manager verifying the fact that appellant had on deposit sufficient funds to cover the check and assuming all blame for the error. The Department has held that checks timely submitted with an oil and gas lease offer for advance rental, and with a request for five-year extensions of an oil and gas lease for filing fee and advance rental, which checks were erroneously dishonored by the drawee bank after the date of the filing, are considered to have been paid within the prescribed time. See Duncan Miller, A-29278 (May 13, 1963); Duncan Miller, 70 I.D. 113 (1963); cf. Duncan Miller, 10 IBLA 27 (1973); Charles F. Mullins, 6 IBLA 184 (1972).

We find that the letter from the bank is sufficient explanation that the check was erroneously dishonored. Therefore, on the basis of the above cases, we find that appellant has made proper payment and that the State Office should issue the lease.

Accordingly, 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 State Office is reversed.

Edward W. Stuebing, Member

We concur:

Anne Poindexter Lewis, Member

Frederick Fishman, Member.

