

ALFRED B. TYLER, EXECUTOR

IBLA 73-389

Decided November 1, 1973

Appeal from decision of the Alaska State Office, Bureau of Land Management, denying reinstatement of oil and gas lease A-061606! C.

Affirmed.

Oil and Gas Leases: Reinstatement! ! Oil and Gas Leases: Rentals

On petition for reinstatement of an oil and gas lease, failure to timely pay the advance rental on an oil and gas lease will be deemed "justifiable" when such failure is the result of sufficiently extenuating circumstances which affected the lessee's action. The death of lessee's mother on April 30, 1970, is not proximate enough in time to September 1, 1971, the anniversary date of the lease, to be a justifiable cause for such a delay, and the petition for reinstatement is properly denied.

Oil and Gas Leases: Reinstatement! ! Oil and Gas Leases: Rentals

On petition for reinstatement of an oil and gas lease, the lessee must show that his failure to timely pay the advance rental was justifiable or not due to a lack of reasonable diligence. When the lessee mails the rental payment from Sunnymeade, California, by regular mail to Anchorage, Alaska, two days before the payment is due, he has not exercised reasonable diligence and the petition for reinstatement is properly denied.

APPEARANCES: Alfred B. Tyler, Executor, pro se.

OPINION BY MR. STUEBING

Alfred B. Tyler, Executor for the estate of Cleo Tyler, appeals from a decision of the Alaska State Office, Bureau of Land Management, dated May 9, 1973, which held that Cleo Tyler's lease had terminated by operation of law in accordance with the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1970) for nonreceipt of the annual rental on or before the anniversary date of the lease, and denied his petition for reinstatement of the lease under 30 U.S.C. § 188(c) (1970).

The oil and gas lease issued effective September 1, 1964, and automatically terminated by operation of law on September 1, 1971, the anniversary date of the lease. Having received notification of the termination of the lease, appellant filed a timely petition for reconsideration on September 22, 1971. He explained that his mother, Cleo Tyler, who had been the lessee, died on April 30, 1970, 1/ and that the lease papers did not come to his attention until August 29, 1971. He placed the rental payment in the mail on August 30, 1971, and the payment reached the State Office on September 3, 1971.

On May 9, 1973, the State Office rendered its decision denying the petition for reconsideration because it did not find that appellant's failure to timely pay was either justifiable or not due to a lack of reasonable diligence as set forth in 43 CFR 3108.2-1(c) issued pursuant to 30 U.S.C. § 188(c) (1970).

Under 30 U.S.C. § 188(c) (1970) the lease may be reinstated provided the lessee pays or tenders the rental within 20 days after the anniversary date and petitions for reinstatement and shows that failure to timely pay was either justifiable or not due to lack of reasonable diligence.

Appellant has not shown that the delay in his payment was either justifiable or not due to a lack of reasonable diligence. The Board has held that failure to timely pay is "justifiable" when the lessee shows that such failure was the result of sufficiently extenuating circumstances which affected the lessee's action. John Rusiniak, 10 IBLA 74 (1973); R. G. Price, 8 IBLA 290 (1972); see Louis Samuel, 8 IBLA 268 (1972); Wayne L. Williston, 13 IBLA 201 (1973). If the

1/ The State Office's decision shows April 30, 1971 as the date of Cleo Tyler's death. Since the Letters Testamentary naming appellant as Executor were filed with the Superior Court of the State of California, for the County of Riverside, on June 19, 1970, April 30, 1970 must be the correct date, as stated in Tyler's appeal.

circumstances involve illness or death, these events must be sufficiently proximate to the due date of the rental in order for them to come within the confine of "justifiable" cause. R. G. Price, supra; Louis Samuel, supra. In Price, the Board considered a case in which the lessee was out of town at the bedside of his father-in-law who died on January 25, 1972. Payment was due on February 1, 1972. The Board held that the failure to timely pay was justifiable because of the close proximity of the date of the father-in-law's death to the due date. In the instant case, Appellant's mother died on April 30, 1970, and payment was not mailed until August 30, 1971. On the basis of the Price decision we do not find that the date of death is sufficiently proximate to the due date as to render the death a justifiable cause of delay. We note that the death of appellant's mother in April 1970 did not prevent timely payment of the annual rental which was due by September 1 of that year. The record shows that payment was received on August 14, 1970.

Neither do we find that appellant exercised reasonable diligence in mailing the payment. Reasonable diligence normally requires sending or delivering payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal and delivery of the payment. 43 CFR 3108.2-1(c)(2). Monturah Company, 10 IBLA 347 (1973); John L. Stambaugh, 11 IBLA 27 (1973); Louis Samuel, supra. Appellant did not exercise reasonable diligence in mailing payment by regular post from Sunnymead, California, on August 30, 1971, and expecting it to arrive in Anchorage, Alaska, by September 1, 1971. Appellant admits that it was an oversight not to send the payment air mail.

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 affirmed.

Edward W. Stuebing
Member

We concur:

Douglas E. Henriques
Member

Frederick Fishman
Member

