

MARY WHITE AND JAMES WHITE, SR.

IBLA 73-371

Decided November 16, 1973

Appeal from a January 22, 1972, decision of the Nevada State Office, Bureau of Land Management, denying reinstatement of oil and gas lease Nev. 064918! D 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

An oil and gas lease terminated by operation of law for failure to pay the advance rentals timely will be reinstated when the lessee shows that his failure to pay the rental on or before the anniversary date was not due to a lack of reasonable diligence.

APPEARANCES: Mary White and James White, Sr., pro sese.

OPINION BY MRS. THOMPSON

The Whites have appealed from the January 22, 1973, decision of the Nevada State Office, Bureau of Land Management which denied reinstatement of oil and gas lease Nev. 064918! D "for failure to exercise reasonable diligence in transmitting the annual rental."

The due date for the payment of the annual rent was January 1, 1973. The State Office received the payment on January 3, 1973. As this was after the anniversary date of the lease, it automatically terminated, Act of July 29, 1954, 30 U.S.C. §188(b) (1970), and a notice of termination was sent to the Whites. A request for reinstatement of the lease was made to the State Office but denied.

In order to qualify for reinstatement of an oil and gas lease which has been terminated for failure to pay the annual rental on or before the anniversary date, the lessee must show to the satisfaction of the Secretary that his failure to make a timely payment was either justifiable or not due to a lack of reasonable diligence on his part. 30 U.S.C. § 188(c) (1970); 43 CFR 3108.2-1(c)(2). See Louis Samuel, 8 IBLA 268 (1972).

The Whites assert that although the rental payment was sent in a letter postmarked January 1, 1973, they actually mailed the payment on December 27, 1972. They have submitted a copy of the receipt of the money order used to make the payment which is dated December 27, 1972. They state they purchased the money order and mailed the payment the same day. They indicate that for eight years they have always submitted the rentals timely and did so this time also.

The date appellants assert they mailed the rental occurred during the Christmas season. We note that because Chicago handles such a large volume of mail during this period, delay between the time of mailing and postmarking is possible. This possibility plus several other factors including the Whites' eight! year record of paying the annual rental on time and their submission of a money order receipt dated December 27, 1972, give circumstantial support and credibility to their assertion which might not be present absent all these factors. We are persuaded by appellants' showing that the rental payment was deposited by them in the mails prior to the date shown on the postmark. ^{1/} Therefore, the mailing was sufficiently in advance of the anniversary date that the late arrival was not due to a lack of due diligence on their part and the lease should be reinstated if all else be regular. See R. G. Price, 8 IBLA 290, 292 (1972); Louis Samuel, 8 IBLA 268, 272 (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 appealed from is reversed and remanded for further appropriate action.

Joan B. Thompson
Member

We concur:

Anne Poindexter Lewis
Member

Newton Frishberg
Chairman

^{1/} For other Departmental decisions finding proof of mailing to be a date different from that shown by the postmark see A. Anton Frederickson, A-30793 (November 28, 1967); John W. Monzel, A-28817 (August 31, 1961). See also 1 Wigmore, On Evidence, § 151 (3d ed. 1940); Meeks v. State Farm Mutual Automobile Company, 460 F.2d 776 (5th Cir. 1972).

