WESTERN STANDARD CORPORATION

IBLA 74-15 Decided December 4, 1973

Appeal from decision (W-20174) of Wyoming State Office, Bureau of Land Management, holding coal prospecting permit terminated for failure to pay rental timely.

Affirmed.

Coal Leases and Permits: Permits--Coal Leases and Permits: Rentals

A prospecting permit terminates automatically where the permittee fails to pay the rental on or before the anniversary date of the permit.

APPEARANCES: Robert L. Raforth, Manager, Western Standard Corporation, Riverton, Wyoming, for appellant.

OPINION BY MR. FISHMAN

Western Standard Corporation, 1/ the proposed assignee of Page T. Jenkins, has appealed from a decision of the Wyoming State Office, Bureau of Land management, dated June 21, 1973, holding a coal prospecting permit terminated for failure to pay rental timely.

A coal prospecting permit was issued to Page T. Jenkins under the Acquired Lands Leasing Act, as amended, 30 U.S.C. §§ 351-359 (1970). The permit was issued for a period of two years, effective June 1, 1970. He requested and was granted a two-year extension of the permit.

1/ Western Standard Corporation is the proposed assignee of Page T. Jenkins with respect to the coal prospecting permit. The corporation is therefore a party "adversely affected" by the decision. 43 CFR 4.410. Although Western purports to represent Page T. Jenkins, it cannot represent him under the Rules of Practice, 43 CFR 1.3, under the showing made.

Appellant concedes that Jenkins did not pay the rental on or before June 1, 1973, the anniversary date of the permit. Appellant asserts, however, that the decision below should be reversed because of extenuating circumstances. The extenuating circumstances to which appellant refers are stated in its reasons for appeal as follows:

> This rental payment was due on June 1, 1973 in the amount of $30.00. At the time the rental was due, we could not send payment, as all checks require two signatures and one of the signatories was out of town for a number of days. The Bureau of Land Management office was called and assurance was made that it would be satisfactory to send the payment as soon as the absent signatory returned. The payment was mailed on June 1, 1973, but due to the dilatory mail service, payment was not received at the Bureau of Land Management until June 4, 1973.

The applicable regulation, 43 CFR 3511.4-2(b)(1), provides:

> (b) Terminations and expirations for nonpayment of rental. (1) Any prospecting permit shall terminate automatically if the permittee fails to pay the rental on or before the anniversary date of the permit. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely.

Section 5 of the permit provides that "annual rental payment shall be made on or before the anniversary date of the permit." Section 11 of the permit restates 43 CFR 3511.4-2(b)(1).

The language of 43 CFR 3511.4-2(b)(1) is clear. It is also mandatory in its requirement that rental be paid on or before the anniversary date of the permit. The only exception to payment on or before the anniversary date, as stated in the regulation, is where the time for payment falls on a day when the office to receive payment is not open. In such an event, payment received on the next official working day is deemed to be timely. This was not the case here.

The offered excuse for late payment, therefore, is not a sufficient ground on which to base a reversal of the Bureau's decision.

Accordingly, 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.

Frederick Fishman, Member

We concur:

Joan B. Thompson, Member

Newton Frishberg, Chairman