

MARGARET S. DECKER

IBLA 74-52

Decided January 23, 1974

Appeal from the July 16, 1973, decision of the Alaska State Office, Bureau of Land Management, denying reinstatement of oil and gas lease A-060700-T.

Affirmed.

Oil and Gas Leases: Termination

Pursuant to 30 U.S.C. § 188(b) (1970), where an oil and gas lessee fails to make his annual rental payment at the appropriate Bureau of Land Management Office on or before the anniversary date, the lease is terminated by operation of law.

Oil and Gas Leases: Reinstatement--Withdrawals and Reservations: Effect of

Where an oil and gas lease is terminated by operation of law and the lands involved are withdrawn from mineral leasing either before or after such a termination, a petition for reinstatement of the lease must be rejected, notwithstanding a finding of justifiable delay. 43 CFR 3108.2-1(c)(3).

APPEARANCES: Margaret S. Decker, pro se.

OPINION BY MR. STUEBING

Margaret S. Decker has appealed from the July 16, 1973, decision of the Alaska State Office, Bureau of Land Management, denying reinstatement of her oil and gas lease A-060700-T. Though the annual rental for the lease was due on March 1, 1973, the appellant did not mail it until February 28, 1973, and it was not received until March 2, 1973. Therefore, the lease terminated by operation of law due to untimely payment of the annual rental. 43 CFR 3108.2-1(a).

However, 43 CFR 3108.2-1(c) provides that a lease which has terminated by operation of law may be reinstated if the untimely payment was either justifiable or not due to a lack of reasonable diligence. Appellant argues that she was seriously ill during the last three weeks of February 1973, and since she lives alone was unable to mail the payment until February 28, 1973. Appellant has submitted acceptable evidence, a letter from her physician, which supports her claim of illness. Accordingly, she argues, her failure to make a timely payment of the annual rental was justifiable within the meaning of both the applicable regulation, 43 CFR 3108.2-1(c), and the pertinent case law, Louis Samuel, 8 IBLA 268, 274 (1972).

It is immaterial that appellant's untimely payment of the rental is probably justified; her lease cannot be reinstated since the land had previously been withdrawn from all forms of mineral entry by Public Land Order 5179, 37 F.R. 5579 (1972). The pertinent regulation provides that:

Under no condition will a terminated lease be reinstated if \* \* \* the Federal oil and gas interests have been withdrawn \* \* \*.  
43 CFR 3108.2-1(c)(3).

See Usibelli Coal Mine, Inc., 13 IBLA 365 (1973); Edgar L. Craven, 13 IBLA 292 (1973); Robert F. Kimpel, 13 IBLA 286 (1973).

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.

---

Edward W. Stuebing, Member

We concur:

---

Douglas E. Henriques, Member

---

Anne Poindexter Lewis, Member

