

Editor's note: Reconsideration denied by order dated Feb. 20, 1974

MAURICE E. MOSHER

IBLA 74-54

Decided January 31, 1974

Appeal from decision of the New Mexico State Office, Bureau of Land Management, denying a petition to reinstate a terminated oil and gas lease.

Affirmed.

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 on time can only be reinstated when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence.

APPEARANCES: Maurice E. Mosher, pro se.

OPINION BY MRS. THOMPSON

Maurice E. Mosher appeals from the decision of the New Mexico State Office, Bureau of Land Management, dated July 23, 1973, which refused to reinstate his oil and gas lease NM-8723-A.

The Act of July 29, 1954, 68 Stat. 585, amending section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188(b) (1970), provides that an oil and gas lease will terminate by operation of law if the annual rental is not paid on or before the anniversary date of the lease. Section 31 of the Mineral Leasing Act was further amended by the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188(c) (1970), to allow reinstatement of a terminated lease upon a lessee's timely petition. The lessee, however, must show that the failure to pay on time "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." Id. The State Office, in denying the lessee's petition to reinstate the lease, found that he had not satisfied the requirements for reinstatement. We agree.

The rental payment due date was June 1, 1973. Appellant's envelope containing the payment was postmarked in Los Angeles, California, on May 31 and received in the Bureau's Office in Santa Fe, New Mexico, on June 4, 1973.

Appellant asserts that: (1) "it does not seem equitable that I should be penalized for any delay in the mails, especially considering the Saturday and Sunday intervening * * *;" (2) the late payment was caused by his being out of town on a business trip; and (3) this Board has the power to excuse compliance with the law where the payment is only a few days late.

Appellant's assertion that an intervening Saturday and Sunday delayed the transmission of his payment is not supported by the facts. We take official notice that June 1, 1973, was not a Monday, but a Friday. There was no intervening weekend to cause a delay between the day he mailed the payment, a Thursday, and the next day, when payment was due. In addition, a lessee is not reasonably diligent unless he proves that his payment was sent sufficiently in advance of the anniversary date to account for normal delays in the mails. 43 CFR 3108.2-1(c)(2). Appellant has not offered any proof that a letter mailed in Los Angeles, California, would arrive in Santa Fe, New Mexico, the next day in the normal course of delivery. We find he was not reasonably diligent in sending the payment. Louis Samuel, 8 IBLA 268 (1972).

Appellant's assertion that he was unable to pay the rental because he was on a business trip is not "justifiable." Failure to pay the rental on or before the anniversary date is "justifiable" where the failure is due to factors outside the lessee's control. Louis Samuel, supra at 274. Appellant's business trip was a factor clearly in his control and he was fully capable of making the payment while he was on the trip, or before his departure.

Finally, appellant misconceives our authority to reinstate oil and gas leases terminated by 30 U.S.C. § 188(b) (1970). We may do so only where the remedial provisions of 30 U.S.C. § 188(c) (1970) are met, even though there is no harm caused by the late payment. See Norman K. Husted, 12 IBLA 341, 342 (1973).

Therefore, 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 New Mexico State Office denying the petition for reinstatement is affirmed.

Joan B. Thompson, Member

We concur:

Edward W. Stuebing, Member

Newton Frishberg, Chairman

