

CHARLES SCHULTE
EVELYN SCHULTE

IBLA 74-119

Decided March 12, 1974

Appeal from a decision of the Utah State Office, Bureau of Land Management, denying a petition to reinstate terminated oil and gas lease W- 20153-A.

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 either justifiable or not due to a lack of reasonable diligence.

APPEARANCES: Charles Schulte, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Charles and Evelyn Schulte appeal from the September 21, 1973, decision of the Utah State Office, Bureau of Land Management, which refused to reinstate oil and gas lease W-20153-A. The rental payment due date for oil and gas lease W- 20153-A was September 1, 1973. Because September 1 was a Saturday, the payment was not due in the State Office until the next business day, in this case September 4, 1973. 43 CFR 3108.2-1. Appellants envelope containing the payment was postmarked in Michigan on September 4, 1973, and received in the Bureau's office on September 6, 1973. The State Office, in denying the lessee's petition to reinstate the lease, found that the delay in filing was not justifiable, but was due to a lack of reasonable diligence. We affirm the decision.

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.

A Departmental regulation says that reasonable diligence * * *

normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. The authorized officer may require evidence, such as post office receipts, of the time of sending or delivery of payments.

43 CFR 3108.2 -1(c)(2). Since appellants did not mail the payment until the due date, we find that they were not reasonably diligent.

In support of their request for reinstatement appellants assert that they were on vacation and their mail did not keep up with them. We infer from their statement that they were relying on a courtesy notice mailed to oil and gas lessees by the Bureau to remind them when payment was due.

Being away on vacation does not come within the meaning of "justifiable" as defined by the Board. A delay is justifiable when it is caused by an event beyond the control of the lessee. Louis Samuel, 8 IBLA 268, 274 (1973). Appellants' vacation was a factor fully in their control. Appellants could have paid the lease rental before they went on vacation. We also note that any reliance by appellants on the courtesy notice is misplaced. Harold A. Armann, 13 IBLA 279, 280 (1973); Louis J. Patla, 10 IBLA 127, 128 (1972). The courtesy notice is not a bill, but a reminder to the lessee that payment is due; failure to receive the notice does not permit noncompliance with the law. Id. Appellants' failure to make the payment was not justified.

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.

Joan B. Thompson
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Martin Ritvo
Administrative Judge

