

LOUIS H. HUGHES

IBLA 74-188

Decided June 28, 1974

Appeal from a decision of the Utah State Office, Bureau of Land Management, denying reinstatement of oil and gas lease U-0142013-0.

Affirmed.

Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

It is proper to deny a request for reinstatement of an oil and gas lease terminated by operation of law for failure to pay advance rental timely where the petitioner has not shown that his failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence.

APPEARANCES: Louis H. Hughes, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Louis H. Hughes has appealed from the December 6, 1973, decision of the Utah State Office, Bureau of Land Management, denying his petition for reinstatement of oil and gas lease U-0142013-0 which terminated November 1, 1973. Rental in the amount of \$20 was due on or before November 1 but was not paid until November 12, 1973. Therefore, the lease terminated by operation of law pursuant to 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).

The Bureau issued a termination notice on November 19, 1973, in which appellant was informed of his right to petition for reinstatement of the lease if he could show that his failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence, Act of May 12, 1970, 84 Stat. 206, which further

amended section 31 of the Mineral Leasing Act, 30 U.S.C. § 188(c) (1970); 43 CFR 3108.2-1(c). Appellant filed a timely petition for reinstatement of the lease. He stated that this was the first time in ten years that he had been late in paying the rent and the delayed payment was caused by a misplacement of incoming mail. In denying appellant's petition to reinstate the lease, the Bureau found that his failure to make timely payment was not justifiable but was due to a lack of reasonable diligence.

In his appeal appellant asserts (1) an 11-day grace period is not too much to expect from the Department as his rental was never late during the past ten years, and (2) he was late in receiving the courtesy notice because it was placed in the wrong post office box (presumably, by the post office).

First, when payment of the annual rental is not received on or before the anniversary date, the lease is not terminated by a decision of the Bureau of Land Management. The lease actually terminates automatically by operation of law, pursuant to the Act of July 29, 1954, supra, and the occurrence of the termination is merely noted by the Bureau officer and communicated to the lessee. Therefore, this Department has no authority to reinstate such a lease unless the remedial provisions of 30 U.S.C. § 188(c) (1970) are met, which appellant has failed to do. See Ernst Soffer, 15 IBLA 161 (1974); Maurice E. Mosher, 14 IBLA 287 (1974).

Appellant's second reason that the delayed payment was due to his late receipt of the courtesy notice because of a mistake by the post office is without merit. The courtesy notice is not a bill, but a reminder that payment is due. The Bureau is under no obligation to provide lessees with courtesy notices, and the fact that appellant received the notice too late is not a justifiable excuse for his failure to pay the rental within the time required. Louis J. Patla, 10 IBLA 127 (1973); Ernst Soffer, supra; Charles Schulte, Evelyn Schulte, 15 IBLA 104 (1974); Jan R. Christensen, United Investors Corporation, 15 IBLA 72 (1974).

Accordingly, we find that appellant's request for reinstatement of the lease was properly denied because he has not shown that his failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to lack of reasonable diligence. 1/

1/ Judge Lewis reluctantly reaches the result herein but feels bound by the majority as expressed in Louis J. Patla, supra. See her dissents in Monturah Co., 10 IBLA 347 (1973); and A. O. Holley, 14 IBLA 264 (1974).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Martin Ritvo
Administrative Judge

