

CHARMAINE BOWERS

IBLA 74-208

Decided June 28, 1974

Appeal from the decision of the Bureau of Land Management's Utah State Office denying appellant's petition for reinstatement of her terminated oil and gas lease U-16618-0.

Affirmed.

Oil and Gas Leases: Reinstatement

It is proper to deny a petition for reinstatement of an oil and gas lease terminated for failure to pay the annual rental when due where the petitioner attributes the tardy payment to the fact that she moved from her address of record and the billing notice was not forwarded to her new address and she mistakenly believed that the rental could be paid anytime during the month in which it was due.

APPEARANCES: Charmaine Bowers, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Charmaine Bowers has appealed from the January 17, 1974, decision of the Utah State Office, Bureau of Land Management, denying her petition for reinstatement of oil and gas lease U-16618-0. The lease terminated automatically, as required by 30 U.S.C. § 188(b)(1970), upon appellant's failure to pay the annual rental on or before December 1, 1973, the due date. The relevant portion of the statute provides

* * * upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law.

Although payment was due on December 1, 1973, it was not mailed from Hawaii until December 10, and it was not received by the Utah State Office until December 14.

Reinstatement of a terminated lease may be allowed where the lessee can demonstrate that the failure to pay the full amount when due "was either justifiable or not due to a lack of reasonable diligence * * *." 30 U.S.C. § 188(c) (1970). This Board has held that reasonable diligence is established where it is shown that the lessee mailed the payment in sufficient time so that in the normal course of events it would have been received on or before the due date. Louis Samuel, 8 IBLA 268 (1972). See also, 43 CFR 3108.2-1(c)(2).

Where, as in this case, the rental is not mailed by the lessee until ten days after it is due, reasonable diligence has not been shown. We are therefore left to consider whether the lessee's failure to exercise reasonable diligence was "justifiable" within the meaning of the statute.

Appellant, in her petition for reinstatement and in her statement of reasons for appeal says that she moved from her address of record in late October 1973. She states that the courtesy notice of rental due, which is customarily sent by the Bureau, was never received at her new address, and she summarizes that it was not forwarded from her previous address. She states, "* * * I believed I dropped the [change of address] card off at the main post office in the downtown area," but when she became aware that her mail was not being forwarded she checked with the local branch post office and found that it had no record of the change. She then undertook to notify business correspondents of her new address, at which time she found the subject lease among her papers. She then sent the rental check "honestly thinking that it was due anytime in December."

We are unable to find that these circumstances constitute justification for appellant's failure to exercise due diligence in remitting the payment timely. Such failure is "justifiable" where the failure is due to factors outside the lessee's control. Louis Samuel, *supra*, at 274. What appellant has related is a failure to understand that the rental could not be paid "anytime in December" coupled with an oversight which, while normal and understandable in human terms, is not justification within the intent of the statute. The lessee has a responsibility to maintain the lease in good standing and failure to do so may not be excused on grounds of forgetfulness, simple inadvertence,

or ignorance of the regulations. Louis Samuel, supra. Failure of the lessee to receive the courtesy notice is likewise insufficient to justify late payment. Louis J. Patla, 10 IBLA 127 (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 appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Newton Frishberg
Chief Administrative Judge

