

DUNCAN MILLER

IBLA 74-282

Decided September 27, 1974

Appeal from decision of Utah State Office, Bureau of Land Management, disqualifying appellant from receiving a noncompetitive oil and gas lease for failure to file first year rental payment within the required time.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Rentals

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn number one at a simultaneous drawing when he fails to pay the first year rental within 15 days of receipt of the notice that such payment is due.

APPEARANCES: Duncan Miller, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

On March 6, 1974, the Utah State Office, Bureau of Land Management, sent Duncan Miller (appellant), a notice that his simultaneous oil and gas offer U 25535, filed pursuant to the noncompetitive lease provisions of the Mineral Leasing Act, 30 U.S.C. § 226(c) (1970), was drawn number one for parcel U21 at the February simultaneous drawing. The notice informed appellant that first year's rental was due within 15 days of receipt of the notice. The U.S. Postal Service informed the State Office that appellant signed for the notice on March 19, 1974. By letter decision

of April 8, 1974, the State Office disqualified appellant from receiving the lease for failure to submit the first year's rental by April 3, 1974, the last day of the 15-day period provided for by 43 CFR 3112.4-1. The State Office received payment on April 4, 1974. On April 25, 1974, the State Office sent notice of payment due to the second successful drawee.

In his appeal, 1/ Mr. Miller argues that: (1) there has been an improper computation of time; and (2) the letter was sent on time and would have arrived on time if it had not been erroneously handled by either the post office or the land office. This means, he asserts, that "certain equitable rulings" must be applied in this situation.

Appellant does not explain how the 15-day time period was improperly computed, nor can we find any improper computation.

[1] Neither does appellant present any argument in support of his second contention. The applicable regulation, 43 CFR 3112.4-1, provides that "[r]ental must be received * * * within fifteen (15) days from the date of receipt of notice * * *." Failure to file necessary documents or to make required payments on time results in cancellation of a lease or disqualification of an offeror. See J. V. McGowen, 9 IBLA 133 (1973). The regulation requires the filing, not just the tendering, of such payment within the period. See 43 CFR 1821.2-2(f). The rental payment regulation makes disqualification under such circumstances automatic and the offer having next highest priority is immediately put under consideration. 43 CFR 3112.4-1. The regulation thus admits of no grace period, since adverse parties' rights are involved. McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955). See 43 CFR 1821.2-2(g).

The State office properly held appellant's offer disqualified for failure to file payment within the time provided.

Appellant does not identify the "equitable rulings" he feels should be applied. 2/ As we have noted, no grace

1/ The State Office decision and the appeal both include simultaneous offer U 25553. By appellant's request, the appeal is dismissed as to this offer. 2/ Because the regulatory language is clear and unambiguous, the rule that an ambiguous regulation will not be construed so as to deprive an applicant of his statutory

period is contemplated by the regulation, nor is a tender of payment sufficient. ^{3/} There is no "reinstatement" provision for disqualified simultaneous oil and gas lease offers; the standards in 30 U.S.C. § 188(c) (1970) are inapposite. In the absence of any more specific reference, we find no merit in this contention.

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.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

fn. 2 (Cont.)
preference right is irrelevant. E.g., Mary I. Arata, 4 IBLA 201, 78 I.D. 397 (1971).
^{3/} Compare 43 CFR 3112.4-1 with e.g., 43 CFR 4125.1-1(a)(3), discussed in Cox Enterprises, Inc., 14 IBLA 29 (1973).

