

FRANK J. GERMANO

IBLA 75-130

Decided February 6, 1975

Appeal from a decision of the Eastern States Office, Bureau of Land Management, denying reinstatement of oil and gas lease ES 9056, Louisiana.

Affirmed.

1. 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: Frank J. Germano, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Frank J. Germano has appealed to this Board from the August 16, 1974, decision of the Eastern States Office, Bureau of Land Management, which denied his petition for reinstatement of his oil and gas lease. The reason for the denial was he did not allow for normal mail delivery time for his rental payment and therefore did not exercise due diligence under the terms of the regulations.

The rental payment was due in Silver Spring, Maryland, on or before July 1, 1974. Appellant's payment was sent by airmail on June 30 from Baton Rouge, Louisiana, postmarked "PM," and was not received by the Bureau office in Silver Spring, Maryland, until July 3, 1974.

The Eastern States Office, in denying the petition for reinstatement, found that appellant had not exercised reasonable diligence as defined in 43 CFR 3108.2-1(c)(2), as the office had been informed

by post office personnel that the normal delivery time of an air mail letter from Baton Rouge, Louisiana, to Silver Spring, Maryland, would be two days.

Appellant's reasons for appeal are:

1. I have always been under the impression that the postmark date of payment was legally acceptable as is the case of Federal Income Tax Returns.
2. Numerous public references to the excellent service to be expected from the postal department led me to believe that delivery would be made by the due date.

The pertinent statute provides that a lease which has terminated by operation of law may be reinstated if the lessee shows to the satisfaction of the Secretary of the Interior that his failure to pay the rental on time was either justifiable or not due to a lack of reasonable diligence on his part. 30 U.S.C. § 188(c) (1970). Regulation 43 CFR 3108.2-1(c)(2) defines reasonable diligence as follows:

\* \* \* 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.\* \* \*

[1] We find that appellant's failure to make timely payment of the rental was not justifiable, and that he did not exercise reasonable diligence. The regulations of this Department concerning timely payment of lease rentals, which make the time of receipt the effective date, govern this matter and not the regulations of the Internal Revenue Service relating to income tax returns. This Board has held that the law relating to late payment of income taxes does not constitute justification for late rental payments, and ignorance of the regulations does not excuse such failures. Schubert Byers, 17 IBLA 255, 256 (1974); Louis Samuel, 8 IBLA 268 (1972). Nor does appellant's reliance on numerous public references to the excellent service to be expected from the Postal Service constitute justification for his failure. In Schubert Byers, supra, the Board said "[a]ppellants' strict reliance on the posted mail schedules did not allow any leeway for possible delay." Appellant's mailing of the rental the day before it was due does not constitute reasonable diligence as it was not sent sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of mail. See Schubert Byers, supra; Louis Samuel, supra.

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.

Anne Poindexter Lewis  
Administrative Judge

We concur:

Joseph W. Goss  
Administrative Judge

Martin Ritvo  
Administrative Judge

