

CHARLES L. PARKS

IBLA 75-126

Decided February 10, 1975

Appeal from decision of the Utah State Office, Bureau of Land Management, denying appellant's petition for reinstatement of oil and gas lease U-3307-G.

Affirmed.

1. 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 rental as required by § 31 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 188(b) (1970), 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: Charles L. Parks, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Charles L. Parks has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated August 2, 1974, denying his petition for reinstatement of oil and gas lease U-3307-G. The lease terminated automatically upon appellant's failure to pay the annual rental on or before the due date, as required by 30 U.S.C. § 188(b) (1970). The relevant portion of the statute provides that:

[U]pon 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.

Appellant's payment was due on July 1, 1974. The rental payment envelope was postmarked "P.M. June 30, 1974," and sent from Brooklyn, New York. It was not received in the BLM Office until July 2, 1974. Appellant argues that payment was delayed because a courtesy reminder had not been forwarded to his new address. Appellant urges that it was proper for him to depend upon the receipt of such a notice before making payment. Appellant also states that he made a last minute diligent effort to send the payment before the due date as he contacted the post office in Brooklyn on the morning of June 29, and was advised that an airmail letter directed to a government office would arrive some time on July 1st, but he does not assert or offer evidence that he actually posted the letter on the 29th.

[1] Under certain circumstances, reinstatement of a terminated lease is possible. The lessee must show that his failure to pay on or before the anniversary date "was either justifiable or not due to a lack of reasonable diligence * * *." 30 U.S.C. § 188(c) (1970). Reliance on receipt of a courtesy notice does not justify failure to pay the annual rental on time. Jan R. Christensen, 15 IBLA 72, 75 (1974). An oil and gas lessee has a duty to pay his annual rental even if a courtesy notice is not received. The courtesy notice is not a bill, but a reminder to pay. Failure to receive a notice does not excuse compliance with the Mineral Leasing Act. Id. Specifically, this Board has held that a failure to receive a courtesy notice because the lessee moved and mail was not forwarded promptly to the new address does not excuse the lessee's failure to remit the rental payment when due. Charmaine Bowers, 16 IBLA 204 (1974). Accordingly, failure to pay for this reason was not justifiable.

As for appellant's argument that he acted with reasonable diligence, in Louis Samuel, 8 IBLA 268 (1972), the Department adhered to the general rule found in 43 CFR 3108.2-1(c)(2) that "reasonable diligence" is established if the lessee can prove that he mailed the payment in sufficient time so that in the normal course of events it would be received on or prior to the due date. Appellant did not show reasonable diligence by mailing in his payment only one day prior to the due date. See Duncan Miller, 16 IBLA 71 (1974). Accordingly, appellant's request for reinstatement was properly denied.

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.

Martin Ritvo
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Frederick Fishman
Administrative Judge

