

DAVID KIRKLAND

IBLA 75-239

Decided April 7, 1975

Appeal from decision of Wyoming State Office, Bureau of Land Management, denying reinstatement of oil and gas lease W 35586.

Reversed.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease, terminated by operation of law because the annual rental payment was not received until one day after the due date, may be reinstated upon proper application where the delay in payment is due to accidental injury which prevented lessee's business from being conducted in normal manner.

APPEARANCES: David Kirkland, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

David Kirkland appeals from the November 19, 1974, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting appellant's petition for reinstatement of oil and gas lease W 35586. The annual rental was due on October 1, 1974, but was not received until October 2, 1974. Appellant states that his secretary was seriously injured and in a hospital under sedatives on and before the due date. He further alleges that she is solely responsible for his personal accounts. For those reasons he states that he was unaware of the payment date until October 1, 1974. He states that he immediately telegraphed payment, but the payment was not received until October 2, 1974.

[1] The pertinent statute, regulation, and case law provide that an oil and gas lease terminated by operation of law for failure to pay the annual rental on time may be reinstated only if the reason for late payment was not due to a lack of reasonable diligence or was justifiable. 30 U.S.C. § 188(c) (1970); 43 CFR 3108.2-1(c); Louis Samuel, 8 IBLA 268 (1972), aff'd. Samuel v.

Morton, Civ. No. CV-74-112-ED (D. Calif. 1975). Reasonable diligence requires that the payment be sent sufficiently in advance of the due date to account for normal delays in handling and delivery of the mails. Louis Samuel, *supra*. In the absence of reasonable diligence, a lease may be reinstated if the delay was justifiable, that is, was caused by factors affecting the petitioner's control, and which were the proximate cause of the failure to pay on time. Louis Samuel, *supra*; R. G. Price, 8 IBLA 290 (1972). In a very similar case, Ada E. Lundgren, 17 IBLA 132 (1974), a lease issued to a husband and wife was reinstated where the wife, who was the one who kept the accounts and paid the lease rentals, was seriously ill on the due date. Since this case is sufficiently similar, the lease involved here should be reinstated. ^{1/} See Jane M. Coffey, at appendix, R. G. Price, 8 IBLA 290, 292 (1972).

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 reversed.

Edward W. Stuebing
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Douglas E. Henriques
Administrative Judge

^{1/} Thus, this case is in a different posture from G. Wesley Ault, 16 IBLA 291 (1974), where the negligence of an employee was involved, and is distinguishable from Monturah Company, 10 IBLA 347 (1973), in which the company's regular "mail girl" was accidentally injured, but her duties were assigned to another person who failed to collect and deposit the outgoing mail.

