

FAYE A. NICHOLAS

IBLA 75-372

Decided June 25, 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-20365-AH.

Affirmed.

1. Oil and Gas Leases: Reinstatement

It is proper to deny a request for reinstatement of an oil and gas lease terminated by operation of law for failure to pay rental on or before the anniversary date where the petitioner has not shown either that her failure was justifiable or not due to a lack of reasonable diligence.

APPEARANCES: Faye A. Nicholas, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Faye A. Nicholas has appealed from the January 6, 1975, decision of the Utah State Office, Bureau of Land Management (BLM), which denied her petition for reinstatement of oil and gas lease U-20365-AH. The reason for the denial was that appellant's "failure to make timely payment was not justifiable, but was due to a lack of reasonable diligence."

The rental payment was due in Salt Lake City, Utah, on or before November 1, 1974. Appellant's payment was enclosed in an envelope postmarked "PM 31 Oct 1974", a Thursday, and mailed in Oklahoma City, Oklahoma. The payment arrived on November 4, 1974, a Monday, at the BLM office in Salt Lake City.

30 U.S.C. § 188(b) (1970) states:

* * * 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 * * *.

Reinstatement of such a terminated lease is authorized only if, among other requirements, "* * * it is shown to the satisfaction of the Secretary of the Interior that such failure [to pay the rental timely] was either justifiable or not due to a lack of reasonable diligence on the part of the lessee * * *." 30 U.S.C. § 188(c) (1970).

"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 payments." 43 CFR 3108.2-1(c)(2). Mailing the payment in Oklahoma City the day before it was due in Salt Lake City does not constitute "reasonable diligence." W. E. Hester, Jr., 18 IBLA 420, 421 (1974); Charles L. Parks, 18 IBLA 404, 405 (1974). The Oklahoma City Postmaster stated to BLM that three delivery days should be expected for a letter mailed to Salt Lake City.

Appellant states that she did not submit her payment sooner because she had other bills to pay and was somewhat short on finances. While we sympathize with the appellant's predicament, these are not justifiable reasons for failure to make timely payment. Louis Samuel, 8 IBLA 268, 274 (1972).

The result of appellant's failure to submit her payment on or before the anniversary date under the above circumstances is dictated by law, that is, termination of the lease without reinstatement.

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.

Joan B. Thompson
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Martin Ritvo
Administrative Judge

