

MILAN de LANY

IBLA 75-573

Decided September 16, 1975

Appeal from decision of Utah State Office, Bureau of Land Management, denying reinstatement of oil and gas lease U-5043-LL terminated by operation of law for failure to pay annual rent on or prior to the due date.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

An oil and gas lease terminated by operation of law for failure to pay the advance rent on time may be reinstated only on a showing by the lessee that his failure to pay on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. A failure to exercise reasonable diligence is justifiable when caused by a factor outside the control of the lessee. A lessee's personal illness does not justify late payment unless it is of such a debilitating nature that it actually prevents the lessee from posting payment. Appellant's ability to attend to other business shows that his illness did not prevent him from making timely payment of the rent.

APPEARANCES: Milan de Lany, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Milan de Lany appeals from a decision of the Utah State Office, Bureau of Land Management, denying his petition for reinstatement of oil and gas lease U-5043-LL, terminated by operation of law for failure to make timely payment of the rent. Oil and gas leases terminate by operation of law if the annual rental payment is not received by the proper office by the close of the business on the

anniversary date or on the first business day thereafter if the anniversary date falls on a non-business day. 30 U.S.C. § 188(b) (1970); 43 CFR 3108.2-1(a).

The anniversary date of the lease was March 1, 1975, a Saturday, so the rental check could have been timely received on March 3, 1975. However, the rental check was not received until March 11. It came in an envelope bearing a postmark date of March 8, 1975. Failure to mail the payment "sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment" constitutes a lack of reasonable diligence. 43 CFR 3108.2(c)(2).

In his statement of reasons, the appellant gives the following explanation for the late payment:

When the first notice came earlier this year, and when I sent my 5 days belated check, I had a bad case of flu, but continued my duties in Government service. In addition to these duties, being an ordained minister as well, serving in 3 different languages, I was extremely busy during the Lenten season and in preparation for Easter Services. Much of my regular correspondence was neglected at that time.

The fact that the appellant was able to keep himself busy indicates that his illness did not severely disable him during the period in which timely payment could have been mailed.

[1] An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only on a showing by the lessee that failure to pay on or before the anniversary date was either justifiable or not due to lack of reasonable diligence. 30 U.S.C. § 188(c); 43 CFR 3108.2-1(c). A failure to exercise reasonable diligence in payment of rent is "justifiable" when caused by a factor outside of the control of the lessee, such as an earthquake, flood, or other natural disaster, or the death or illness of the lessee or of a member of his immediate family, occurring in close proximity to the anniversary date of the lease. Sufficiently extenuating circumstances must also be present so as to affect the lessee's actions. Louis Samuel, 8 IBLA 268, 274 (1972). A lessee's personal illness does not justify late payment of the rent unless it is of such a debilitating nature that a person in such circumstances could not reasonably be expected to attend to his ordinary routine affairs. Cf. Ada E. Lundgren, 17 IBLA 132 (1974); Pauline G. Thornton, 17 IBLA 251 (1974). Appellant's ability to attend to some of his

other business shows that his illness did not prevent him from making timely payment of the rent, so reinstatement of the lease must be denied. 1/

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.

Douglas E. Henriques  
Administrative Judge

We concur:

Frederick Fishman  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

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1/ In his petition for reinstatement, the appellant alluded to his slow recovery from cancer surgery. This same surgery was held to justify late rental payment for this same lease due on March 1, 1973. Appellant's success in having this lease reinstated before should have made him aware of the requirement of timely payment of the rent. See Mrs. Charles H. Blake, 20 IBLA 322, 323 n. 1 (1975).

