

JOSEPH M. NOWACKI

IBLA 76-163

Decided December 23, 1975

Appeal from the decision of the Wyoming State Office, Bureau of Land Management, denying reinstatement of oil and gas lease W 29445-G.

Affirmed.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was either justifiable or not due to a lack of reasonable diligence. Neither the absence of lessee on vacation nor non-receipt of an advance courtesy notice satisfies the statutory criteria.

APPEARANCES: Joseph M. Nowacki, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Appellant, Joseph M. Nowacki, appeals from the July 31, 1975, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his petition for reinstatement of oil and gas lease W 29445-G.

This lease expired by operation of law for failure to pay advance rental on or before the anniversary date as provided by 30 U.S.C. § 188(b) (1970) and 43 CFR 3108.2-1(a). The anniversary date of the lease was July 1, 1975. Appellant's check was dated July 8, 1975. The envelope containing the check was postmarked July 9, 1975, and was received in the Wyoming Office July 11, 1975. On July 28, 1975, appellant petitioned for reinstatement of the lease explaining that from June 19 until July 7 he had been vacationing in Europe. Appellant contends he had previously received

courtesy notices from the Bureau a month or more in advance but did not this time, and, therefore, the fault lies with BLM.

[1] A lease terminated by operation of law by 30 U.S.C. § 188(b) (1970) may be reinstated by the lessee's compliance with 30 U.S.C. § 188(c) (1970). Specifically, he must show that the failure to pay timely was "either justifiable or not due to a lack of reasonable diligence" on his part.

"Reasonable diligence" as defined by case law and regulation 43 CFR 3108.2-1(c)(2) means "the lessee has sent or delivered the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal and delivery of the payment, considering, among other things, the distance involved." W. E. Hester, Jr., 18 IBLA 420, 420-21 (1975). Appellant's mailing of his rent 8 days after the anniversary date fails to meet this requirement. Since he left for his vacation in Europe on June 19, 1975, "reasonable diligence" would have dictated making the payment prior to his departure.

A delay in paying the rental timely may be considered "justifiable" if for good reasons, beyond the control of the lessee, he was prevented from making timely payment. "Such reasons include severe illness, natural disaster, or the death of a member of the immediate family." W. E. Hester, Jr., supra at 421. Lessee's vacationing is insufficient. Louis Samuel, 8 IBLA 268, 280 (1972). Further, reliance upon receipt of a courtesy notice will not justify failure to pay annual rental on time. Such reliance neither prevents the lease from terminating by operation of law nor serves to justify failure of timely payment. C. J. Iverson, 21 IBLA 312 (1975). ^{1/} "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." Charles L. Parks, 18 IBLA 404, 405 (1975).

^{1/} A suit is pending in this case, C. J. Iverson v. Frizzell, Civil No. 75-106 (D. Mont., filed October 14, 1975).

Accordingly, 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

