

MICHAEL J. S. MILLER

IBLA 76-249

Decided January 8, 1976

Appeal from a decision of the Eastern States Office, Bureau of Land Management, giving notice of automatic termination of oil and gas lease ES 11455.

Dismissed.

1. Rules of Practice: Appeals: Dismissal

A notice of appeal to the Board of Land Appeals must be dismissed in accordance with 43 CFR 4.411(b), where it was filed within the grace period provided by 43 CFR 4.401(a), but was not transmitted within the appeal filing period.

APPEARANCES: Michael J. S. Miller, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

The Eastern States Office, Bureau of Land Management (BLM), in a decision dated July 24, 1975, declared oil and gas lease ES 11455 terminated for lessee's failure to pay sufficient rent on or before the anniversary date of the lease, as provided by 30 U.S.C. § 188(b) (1970) and 43 CFR 3108.2-1(b). Appellant received the decision August 19, 1975, as reflected by the certified mail return receipt card, and filed a notice of appeal with the proper office on September 25, 1975. The notice had been transmitted 2 days earlier, as evidenced by the postmark on the envelope containing the documents.

Appellant is allowed 30 days after service of the Bureau's decision to file his notice of appeal. 43 CFR 4.411(a). Further, 43 CFR 4.401(a) grants a grace period if the notice is filed within 10 days after the expiration of the filing period, provided "it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed." Id.

The appeal period expired September 18, 1975. Appellant transmitted the notice of appeal on September 23, 35 days after receipt of the Bureau's decision. Filing of the notice occurred 2 days later. ^{1/} Although Appellant filed within the 10-day grace period, the appeal was not transmitted during the 30-day filing period. Therefore, we may not consider this appeal, and it must be dismissed. 43 CFR 4.411(b).

The timely filing of a notice of appeal is jurisdictional. Failure to file in accordance with the regulations mandates dismissal of the appeal. Lavonne E. Grewell, 23 IBLA 190 (1976); Elbert F. Howey, 15 IBLA 208 (1974); Estate of Louis W. Knudsen, 10 IBLA 329 (1973).

Therefore, pursuant to the authority delegated to the Board of Land Appeals, by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Joan B. Thompson
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Frederick Fishman
Administrative Judge

^{1/} The balance of Appellant's rental fee was remitted August 12, 1975, but this does not constitute a notice of appeal. 43 CFR 4.411(a). Further, we note that a petition for reinstatement of the terminated lease could not be granted in this case, because the remittance of the balance of the rental was not in compliance with 30 U.S.C. § 188(c) which requires that the balance be "paid on or tendered within twenty days" after the anniversary date of the lease.

