

EDWARD MALZ

IBLA 76-276

Decided March 26, 1976

Appeal from decision of the Eastern States Office, Bureau of Land Management, denying reinstatement of oil and gas lease ES-11658, terminated by operation of law for failure to pay the annual rental on or before the due date.

Affirmed.

1. Oil and Gas Leases: Reinstatement

Under 30 U.S.C. § 188(c) (1970), the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of rental, unless the rental payment is tendered at the proper office within 20 days of the due date.

2. Oil and Gas Leases: Reinstatement -- Waiver

Cashing of an oil and gas rental check, received more than 20 days after due, does not constitute a waiver which would permit reinstatement of a terminated lease in violation of 30 U.S.C. § 188(c) (1970), despite wording on the check that "by endorsement this check when paid is accepted in full payment * * *."

APPEARANCES: Edward Malz, Esq., New York, New York, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Edward Malz appeals from a decision dated September 19, 1975, by Eastern States Office, Bureau of Land Management, denying his petition for reinstatement of oil and gas lease ES-11658, terminated by operation of law for failure to make timely payment of rental.

The anniversary date of appellant's lease was July 1, 1975. However, appellant's rental check was received on July 24, 1975,

in an envelope bearing a July 21, 1975, postmark, and thus was not filed until after 20 days beyond the due date. The check was cashed and the funds were placed in an unearned account pending a determination as to proper disposition. With his statement of reasons, appellant attached what appears to be a copy of his check, on which appears the following:

BY ENDORSEMENT THIS CHECK WHEN PAID IS ACCEPTED IN FULL
PAYMENT OF THE FOLLOWING ACCOUNT Annual Rental on Gas & Oil
Lease No. ES 11658

[1] Appellant's oil and gas lease terminated by operation of law and not by the act of any official when the annual rental payment was not received in the proper office by the close of business on July 1, the anniversary date of the lease. 30 U.S.C. § 188(b) (1970); 43 CFR 3108.2-1(a). Although the decision of the Eastern States Office considered the merits of appellant's petition for reinstatement and reached the correct result, 1/ the

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 justified or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1970); 43 CFR 3108.2-1(c). 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. (Emphasis added.) 43 CFR 3108.2-1(c)(2).

fact that no tender of payment was received until July 24 required outright rejection of appellant's petition. Pursuant to 30 U.S.C. § 188(c) (1970), the Board has consistently held that the Secretary has no authority to reinstate a terminated lease unless payment has been tendered within 20 days of the due date. E.g., C. J. Iverson, 21 IBLA 312, 82 I.D. 386 (1975). Under 43 CFR 3103.1-2(a), a rental is not paid or tendered when mailed but when paid or tendered at the proper office. See Gordon R. Epperson, 16 IBLA 60 (1974); 43 CFR 1821.2-2(f), 3108.2-1(c)(2).

[2] As to waiver, neither the Secretary nor any employee has authority to waive the requirements of section 188(c). C. J. Iverson, *supra* at 319. Despite the wording on appellant's check regarding acceptance in full payment, the cashing of the check and placing funds in an unearned account does not reinstate the lease by waiver. See Henry Carter, 24 IBLA 70, 71 (1976); cf. United States v. Johnson, 23 IBLA 349, 356 (1976).

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.

Joseph W. Goss
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

