

Editor's note: Appealed -- reversed, Civ. No. C-76-138 (D. Utah April 4, 1978)

HIKO BELL MINING & OIL COMPANY, INC.

IBLA 76-269

Decided March 29, 1976

Appeal from a decision of the Utah State Office, Bureau of Land Management, denying appellant's petition for reinstatement of an oil and gas lease U-27040.

Affirmed.

1. Oil and Gas Leases: Reinstatement

Reasonable diligence requires transmitting a rental payment so that it would normally be received in the appropriate office on or before the anniversary date considering the method of transmission, normal delays in handling, and the distance involved. A payment that is late because it was inadvertently sent by the lessee to the wrong address is neither justifiable nor the result of reasonable diligence.

APPEARANCES: Gerald E. Nielson, Esq., Yano & Nielson, Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is brought from a decision of the Utah State Office, Bureau of Land Management (BLM), denying appellant's petition for reinstatement of a nonproducing oil and gas lease (U-27040). The lease terminated automatically by operation of law when the lessee failed to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1970). The decision below was based on a finding that the lessee had failed to establish that the late rental payment was not caused by lack of reasonable diligence.

Appellant contends on appeal that the lateness of the payment in this case was caused by the unintentional misdirection of the payment to the Colorado State Office of the BLM instead of the Utah

State Office. This kind of error is not inconsistent with a finding of reasonable diligence on the part of the lessee, claims appellant, who further asserts that it was the legislative intent of Congress when enacting the reinstatement statute, Act of May 12, 1970, § 2, 30 U.S.C. § 188(c) (1970), to allow reinstatement in those cases where rental payments were unintentionally mailed to the wrong office of the BLM. It is further argued by the appellant that the so-called "absence of error" standard of reasonable diligence previously applied by this Board in Margaret C. Hose, 19 IBLA 307 (1975), is an erroneous construction of the statutory standard of reasonable diligence.

Appellant also asserts in his statement of reasons on appeal that the lease terms are vague and unclear regarding where the rental payment is to be made to the BLM and that the regulation cited on the lease form with respect to payment of rent appears to have no bearing on the question of where the rental payment should be made. According to appellant, confusion resulting from the vague lease terms and the apparent miscitation, not the lack of reasonable diligence on the part of the lessee, is the cause of the late payment. Finally, appellant contends that the rental payment was in fact made to the BLM in a timely manner, although made to the wrong office, and that hence the lease should never have been terminated in the first place.

A review of the facts discloses that the payment of the annual rent for the subject lease was due in the Utah State Office of the BLM on September 2, 1975 (the anniversary date, September 1, 1975, was a legal holiday and the office was closed). Payment was not received by that office until September 4, 1975. Lessee erroneously mailed its check in payment of the rent for U-27040 to the Colorado State Office of the BLM along with another check in payment of the rental for a lease issued by the latter office. Both checks were received by the Colorado State Office on September 2, 1975. The check in payment of the rent for U-27040 was promptly forwarded by that office to the Utah State Office.

It is provided in the regulations governing oil and gas leasing that rental payments "shall be made to the Authorizing [sic] officers of the proper office." 43 CFR 3103.1-2 (formerly 43 CFR 3102.2). The Utah State Office is identified in the regulations as the BLM office having jurisdiction of oil and gas leases in the State of Utah. 43 CFR 1821.2-1. The proper address is also shown in the regulation.

The annual rental payment for an oil and gas lease is required to be paid in advance, on or before the anniversary date of the lease (or, if the anniversary date falls on a day when the appropriate office of the BLM is closed, the first working day thereafter),

at the proper office of the BLM. 30 U.S.C. § 188(b) (1970); 43 CFR 3103.3-2. Failure to make such timely payment results in the automatic termination by operation of law of an oil and gas lease on which there is no well capable of producing oil or gas in paying quantities. *Id.* Accordingly, the Utah State Office acted properly in treating the subject oil and gas lease as terminated.

The issue raised by appellant's petition for reinstatement is whether, under the circumstances, the late rental payment was either justifiable or not due to a lack of reasonable diligence. An oil and gas lease terminated for failure to make timely rental payment may be reinstated by the Secretary of the Interior where, among other requirements, it is "shown to the satisfaction of the Secretary of the Interior that such failure 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).

[1] Reasonable diligence in sending a rental payment due on the anniversary date means transmitting the payment so that it will normally be received in the appropriate office on or before the anniversary date considering the method of transmission, normal delays in handling, and the distance involved. Margaret C. Hose, supra at 308; M. J. Harvey, Jr., 19 IBLA 230 (1975). For purposes of reinstatement, an adequate tender of the rent usually requires that the envelope bearing the rental payment be properly addressed. A payment that is late because it was inadvertently sent by the lessee to the wrong address is neither justifiable nor the result of reasonable diligence. Margaret C. Hose, supra at 309-10. 1/ Cases of simple inadvertence are not generally justifiable or diligent. Louis Samuel, 8 IBLA 268, 274 (1972).

The case of Margaret C. Hose, supra, is distinguishable from the present case on the facts. Reinstatement of the lease in Hose was ordered because it was found that the mishandling of the envelope containing the payment by the post office rather than the inadvertence of the lessee in misaddressing the envelope was the cause of the late payment. In the instant case the cause of the late rental payment was clearly the fact that the late payment was inadvertently sent by the lessee to the wrong address coupled with the fact that the payment was not mailed until shortly before the due date. The prompt action of the Colorado State Office in forwarding the misaddressed payment illustrates that the late payment and resulting termination could have been avoided despite

1/ While appellant's objections to the Hose case, supra, are duly noted, we adhere to the rationale of that case.

the erroneous address if the lessee had not waited until the last minute to send the rental payment. Thus we are unable to conclude that the late payment was not due to an absence of reasonable diligence.

In answer to appellant's contention that the lease terms are vague and that the citation to the regulation regarding payment of rental is confusing, it must be noted that ignorance of the law, including statutes and regulations, is not a justifiable reason for late payment of lease rental. Vern H. Bolinder, 17 IBLA 9, 11 (1974); Louis Samuel, supra at 274. There was no error in the lease terms which prejudiced appellant. Although the regulation cited in the lease form was the subject of recodification, a check of the redesignation table in the back of volume 43 of the Code of Federal Regulations readily discloses where the regulation can be found in the present edition of the regulations. Appellant's statement of reasons acknowledged that a lessee would presumably be able to locate the redesignated regulation.

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.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

