

A. HELANDER

IBLA 76-373

Decided May 18, 1976

Appeal from a decision of the Montana State Office, Bureau of Land Management, denying reinstatement of oil and gas leases Montana 23362 and 26205 terminated by operation of law for failure to pay the annual rental on or prior to the anniversary date.

Reversed.

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 rental timely will be reinstated when the lessee shows that his failure to pay the rental on or before the anniversary date was not due to a lack of reasonable diligence.

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

An oil and gas lease, terminated because the advance rental was received 1 day after the due date, may be reinstated where it is shown that the lessee mailed the rental payment 3 days prior to the due date from the main post office in the same city where the BLM's field office is located and the postal authorities verify that there had been a delay in the processing of the mail at that particular time. Under these circumstances, the lessee will be considered to have mailed the payment with due diligence.

APPEARANCES: A. Helander, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

A. Helander has appealed from a decision of the Montana State Office, Bureau of Land Management, dated December 11, 1975, denying reinstatement of oil and gas leases Montana 23362 and 26205, terminated by operation of law for failure to pay the annual rental on or prior to the anniversary date.

Under section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1970), the advance rental payment for the leases must be received on or prior to the anniversary date or the leases automatically terminate. In this case payment of the annual rental was due on or before December 1, 1975. The State Office received the payment on December 2, 1975, with the envelope postmarked December 1, 1975. After a notice of termination was sent to appellant, a request for reinstatement was timely filed with the State Office December 9, 1975. The State Office denied the reinstatement finding that appellant's actions could not be construed to be "due diligence."

[1] In order to qualify for reinstatement of an oil and gas lease which has been terminated for failure to pay the annual rental on or before the anniversary date, the lessee must show to the satisfaction of the Secretary that his failure to make a timely payment was either justifiable or not due to a lack of reasonable diligence on his part. 30 U.S.C. § 188(c) (1970); 43 CFR 3108.2-1(c)(2). Joseph M. Nowacki, 23 IBLA 148 (1975).

[2] Appellant asserts that he did use due diligence in submitting the rental payment for these leases. He asserts that although the rental payment was sent in a letter postmarked December 1, 1975, he actually mailed the payment from the main post office in Billings, Montana, on the afternoon of November 28, 1975, 3 days prior to the due date.

He submits that under ordinary circumstances this would be enough time for the rental to reach the Bureau of Land Management by the due date. Appellant has submitted a letter from the Assistant Postmaster of the Billings Post Office which verifies that there had been a delay in the mail at that particular time. Letters that were mailed at that office on November 28, 1975, were not canceled or processed until December 1, 1975.

Accordingly, we are persuaded by appellant's showing that the rental payment was deposited in the mails prior to the date shown on the postmark. Therefore, the mailing of the payment under these circumstances was sufficiently in advance of the anniversary date that the late arrival was not due to a lack of due diligence on

appellant's part and the lease should be reinstated if all else be regular. Mary White, 13 IBLA 363 (1973); see R. G. Price, 8 IBLA 290, 292 (1972).

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 reversed and remanded for further appropriate action.

Martin Ritvo

Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Joan B. Thompson
Administrative Judge

