

ARTHUR J. JAKOBIAK

IBLA 76-454

Decided June 8, 1976

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, denying appellant's petition for reinstatement of oil and gas lease (W 31701-C).

Affirmed.

1. Oil and Gas Leases: Reinstatement

In order to constitute justifiable cause for lessee's failure to make timely rental payment for an oil and gas lease, the asserted extenuating circumstances must be the proximate cause of the late payment. A petition for reinstatement is properly denied where lessee's own statements disclose that this is not the case.

APPEARANCES: Arthur J. Jakobiak, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is brought from a January 16, 1976, decision of the Wyoming State Office, Bureau of Land Management (BLM), denying appellant's petition for reinstatement of oil and gas lease (W 31701-C) which terminated automatically by operation of law, 30 U.S.C. § 188(b) (1970), for failure to pay the annual rental on or before the anniversary date of the lease. The BLM held that appellant's allegations regarding delay in receipt of his mail due to his transfer of duty assignment from one military base to another failed to establish justifiable cause for the late rental payment.

Appellant contends in his statement of reasons on appeal that the late payment was justified and/or that the late payment was not due to a lack of diligence. Appellant states that he is an officer in the United States Air Force and that pursuant to a

transfer of duty location he left Spain on October 22, 1975, and relocated subsequently in Texas. It is further stated by appellant that mail received at his former address after the date of his departure was not forwarded to him in Texas until January 15, 1976. Appellant acknowledges in his statement of reasons that the interruption resulting from the change of location was anticipated, stating:

All business mail was handled to the last detail, understanding that it would be about a month before I could again apply myself to my personal business.

The record discloses that the rental payment for appellant's lease was received by the BLM on December 3, 1975. The anniversary date of the lease was December 1, 1975. The envelope in which appellant's payment was received was postmarked "Midland, Tx. 797, PM, 1 Dec, 1975."

The statute governing reinstatement of terminated oil and gas leases expressly provides that it must be "[S]hown to the satisfaction of the Secretary of the Interior that such failure [to pay the rent timely] was either justifiable or not due to a lack of reasonable diligence \* \* \*." 30 U.S.C. § 188(c) (1970). The burden of proving that the late payment was either justifiable or not due to a lack of reasonable diligence is on the lessee. 43 CFR 3108.2-1(c)(2).

Reasonable diligence generally requires sending rental payments sufficiently in advance of the anniversary date of the lease to allow for normal delays in the collection, transmittal and delivery of the payment. 43 CFR 3108.2-1(c)(2); M. J. Harvey, Jr., 19 IBLA 230 (1975). This Board has previously held that a lessee who mailed the rental payment 2 days before it was due from Texas to Salt Lake City, Utah, was not diligent. William N. Cannon, 20 IBLA 361 (1975). Similarly, mailing the rent from Dallas, Texas, to Billings, Montana, the day before the payment is due does not constitute reasonable diligence. Gordon R. Epperson, 16 IBLA 60 (1974). A fortiori, the mailing by the appellant of the rental payment in Texas in an envelope postmarked on the same day that the payment was due in the State Office in Wyoming cannot be considered reasonable diligence.

[1] Failure to exercise reasonable diligence in paying the annual rental for an oil and gas lease may be "justifiable" when caused by extenuating circumstances outside the control of the lessee occurring in close proximity to the anniversary date of the lease. Pauline G. Thornton, 17 IBLA 251, 253 (1974). In order to constitute justifiable cause, the extenuating circumstances must be the proximate cause for the lessee's failure to make timely rental payment. See M. J. Harvey, Jr., *supra*; Pauline G. Thornton, *supra*.

Although we are in sympathy with appellant's situation, we are unable to find that the circumstances constitute justifiable cause for a late rental payment. Reliance upon receipt of a courtesy notice of oil and gas lease rental due which is not received by the lessee does not justify a failure to pay rent on time; the courtesy notice is not a bill but merely a reminder to pay. Charles L. Parks, 18 IBLA 404, 405 (1975). Accordingly, failure to receive a courtesy notice because the lessee has moved and mail was not forwarded promptly to the new address does not justify late payment. Charles L. Parks, supra; Charmaine Bowers, 16 IBLA 204 (1974).

The circumstances of appellant's move from Spain to Texas commencing about October 22, 1975, pursuant to his transfer by the United States Air Force also fall short of justifiable cause for the late rental payment. Appellant admits, in his own statement of reasons for appeal, that he anticipated prior to the move that it would be about a month after the move before he could again devote time to his own personal business affairs. Appellant states that for this reason all business mail was handled in advance. Thus, the circumstances of the transfer and the move have not been demonstrated to be the proximate cause of the failure to make a timely rental payment.

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

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Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Frederick Fishman  
Administrative Judge

