

JOSEPH S. CALABRESE

IBLA 76-356

Decided June 22, 1976

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, denying the petition of appellant (lessee) for reinstatement of his terminated oil and gas lease (NM 22594).

Affirmed.

1. Oil and Gas Leases: Reinstatement

The regulations require that a petition for reinstatement of an oil and gas lease, terminated by operation of law for failure to make timely payment of the rental, must be filed within 15 days of receipt of notice by the lessee of such termination. A petition for reinstatement filed more than 15 days after receipt of such notice of termination, which notice informed lessee of the 15-day requirement, is properly denied.

APPEARANCES: Joseph S. Calabrese, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is brought from a decision of the New Mexico State Office, Bureau of Land Management (BLM), denying appellant's petition for reinstatement of his oil and gas lease (NM 22594). The lease terminated automatically by operation of law for failure to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. @ 188(b) (1970). The decision below denying reinstatement was based on a finding that appellant failed to submit his petition for reinstatement within 15 days of receipt of notice of termination of the lease as required by the regulations. 43 CFR 3108.2-1(c).

In his statement of reasons for appeal, appellant argues that his late payment was either justifiable and/or not due to a lack

of reasonable diligence because it stemmed from circumstances outside of his control. On appeal, unpredictable mail service was cited by appellant as the cause of the untimely payment. In his petition below, appellant asserted that the reason for the late payment was that his agent had agreed to make timely payment of the lease rental, that the agent went bankrupt, and that hence he did not pay the rent.

Review of the record discloses that the rental payment for appellant's lease was due on September 2, 1975 (the anniversary date, September 1, 1975, was a legal holiday). The rent was actually received by the BLM on September 4, 1975, in an envelope postmarked "BUFFALO, NY 140, PM, 1 SEP, 1975." A form entitled "Oil and Gas Lease Termination Notice" was subsequently sent to the lessee by certified mail. The return receipt card shows that the notice was received by appellant on October 10, 1975.

The notice stated that the lease had terminated for failure to make timely rental payment and informed the lessee that he had a right to petition for reinstatement under statute, 30 U.S.C. @ 188(c) (1970), and the regulations at 43 CFR 3108.2-1(c). The form also elaborated the prerequisites of a properly filed petition for reinstatement including a statement that the petition must be "filed with this office within fifteen (15) days after receipt of this Notice."

Appellant's petition for reinstatement was filed with the BLM on October 31, 1975. As the 15th day following appellant's receipt of notice fell on a Saturday (October 25) when the BLM was closed and the following Monday (October 27) was a legal holiday, October 28 would be the last day for filing of a petition for reinstatement with the BLM under even the most liberal construction of the 15-day time period.

[1] The regulations expressly require that any petition for reinstatement of a lease, terminated by operation of law for failure to make a timely rental payment, be filed with the BLM within 15 days after receipt by the lessee of notice of termination. 43 CFR 3108.2-1(c). Appellant was informed of this 15-day time limit in the notice of termination which he received. Appellant's petition was properly denied for failure to file within the time allowed by the regulation. John J. Nordhoff, 24 IBLA 73, 74 (1976). 1/

1/ Although appellant's failure to comply with the requirement of the regulations that a petition be filed within 15 days of receipt of notice of termination is dispositive of this appeal, it appears that appellant would not be able to meet certain other statutory requirements for reinstatement. A lessee must

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

Frederick Fishman
Administrative Judge

fn. 1 (continued)

show that his failure to pay the rent on time was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c)(1970).

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). Mailing a rental payment from New York to New Mexico on the day before it is due does not constitute reasonable diligence. See William N. Cannon, 20 IBLA 361 (1975); Gordon R. Epperson, 16 IBLA 60 (1974).

Extenuating circumstances outside the control of the lessee occurring near the anniversary date of the lease may constitute justifiable cause for a late rental payment where the circumstances are the proximate cause of the late payment. Lucille Lipphardt, 24 IBLA 81, 83 (1976). However, a lessee who entrusts to an agent the responsibility for payment of the rent must bear the consequences of the neglect or failure of that agent. See Lucille Lipphardt, supra; G. Wesley Ault, 16 IBLA 291, 293 (1974). Bankruptcy or inability to pay does not constitute justifiable cause. Peter T. Creamer, 22 IBLA 175 (1975); Anthony Theophilus, 21 IBLA 287 (1975).

