

JAMES DONOGHUE

IBLA 76-487

Decided June 25, 1976

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, denying appellant's petition for reinstatement of terminated oil and gas lease (W 15352).

Affirmed.

1. Oil and Gas Leases: Reinstatement--Reinstatement: Generally

A petition for reinstatement of an oil and gas lease terminated for lack of timely payment of the rental is properly denied where the appellant does not show reasonable diligence in mailing the payment or a justifiable excuse for the delay in payment. The inadvertence or negligence of the appellant's employee does not justify late payment of the rental.

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

The fact that the courtesy rental notice did not come to appellant's attention until 6 days after the rental due date is not a justifiable excuse for late payment of the rental.

APPEARANCE: William B. Collister, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The rental payment for appellant's oil and gas lease was due on October 1, 1975, but was not received by the Wyoming State Office, Bureau of Land Management (BLM) until October 7, 1975.

As a result, the lease was terminated by operation of law, and the State Office denied appellant's petition for reinstatement of the lease.

Appellant argues that the late payment was justified and was not the result of a lack of due diligence because it was due to a "failure of communication" between appellant and his part-time secretary, resulting in the inadvertent classification of the lease as one that should be dropped for nonpayment of rentals. Because of his secretary's error, appellant did not see the courtesy notice from the BLM until October 7, 1975, whereupon he promptly paid the rent.

Rental payments for federal oil and gas leases on which there are no wells capable of producing oil or gas in paying quantities must be paid on or before the anniversary date of the lease; otherwise, the lease automatically terminates by operation of law. 30 U.S.C. § 188(b) (1970). Reinstatement of the lease may only be granted if the lessee shows "\* \* \*" to the satisfaction of the Secretary of the Interior that such failure [to make timely payment of rental] 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).

Late payment of the rental is "justifiable" only if factors outside the control of the lessee, occurring in close proximity to the anniversary date of the lease, are so extenuating that they affect his actions. Pauline F. Thornton, 17 IBLA 251, 253 (1974); Mrs. Charles H. Blake, 10 IBLA 175 (1973); John Rusiniak, 10 IBLA 74 (1973); Louis Samuel, 8 IBLA 268, 274 (1972). "Reasonable diligence" means that the rental payment is sent or delivered sufficiently in advance of the anniversary date to allow for normal delays in the collection, transmittal and delivery of the payment. 43 CFR 3108.2-1(c)(2); Louis Samuel, 8 IBLA 268, 272-73 (1972).

[1] Appellant did not show reasonable diligence in making the rental payment because the payment was not transmitted to the State Office until 6 days after the anniversary date of the lease. The lack of reasonable diligence in making the payment was not justified by the inadvertent failure of appellant's secretary to send in the payment or notify him of the courtesy notice in time, especially where the failure was due to an admitted "lack of communication" between the lessee and his employee. Charles C. Sturdevant, 20 IBLA 280 (1975); Leon Alfara Miranda, 15 IBLA 89, 91 (1974); A. O. Holley, 14 IBLA 264 (1974); M. A. Schofman, 13 IBLA 205 (1973). The complexities of appellant's business operations do not make justifiable for him actions which would not be justifiable if committed by an individual lessee.

Monturah Co., 10 IBLA 347, 348 (1973). See also Duncan Miller, 16 IBLA 71 (1974); Knight & Miller Oil Corp., 15 IBLA 136 (1974); Columbia Gas Transmission Corp., 13 IBLA 243 (1973).

[2] Appellant asserts that his failure to pay the rental on time was justifiable because he did not see the courtesy notification from the BLM until October 7, 1975 (although it apparently had been received in good time), whereupon he promptly made the rental payment. However, even where lessee alleges that no notice reached him or his agents in time, the Board has repeatedly held that an oil and gas lessee's duty to pay the rental due on or before the anniversary date of the lease arises from the terms of the statute and does not depend on the receipt of a notice from the BLM. Levi T. Bellah, 22 IBLA 1, 2 (1975); Charles L. Parks, 18 IBLA 404, 405 (1975); Jan R. Christensen, 15 IBLA 72 (1974); A. O. Holley, 14 IBLA 264 (1974).

Appellant's excuse that his secretary inadvertently misclassified the lease as one that should be dropped, and that therefore he did not see the courtesy notice until after the anniversary date of the lease, is not a justifiable reason for making a late oil and gas lease rental payment which would warrant reinstatement of the lease.

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.

Edward W. Stuebing

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Administrative Judge

We concur:

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Joseph W. Goss  
Administrative Judge

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Frederick Fishman  
Administrative Judge

