

S. NORMAN STARK

IBLA 76-529

Decided July 19, 1976

Appeal from decision of the Wyoming State Office, Bureau of Land Management, canceling oil and gas lease W-50456.

Set aside and remanded.

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

The Bureau of Land Management has no authority to reinstate an oil and gas lease terminated by operation of law for failure to pay rental on or before the anniversary date when a valid lease for the same land has been issued prior to the filing of the petition for reinstatement. Therefore, unless the first lease is deemed not to have terminated, it is erroneous to cancel the subsequent valid lease.

APPEARANCES: Jack B. Speight, Esq., Cheyenne, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Oil and gas lease W-50456 was issued May 15, 1975, by the Wyoming State Office, Bureau of Land Management (BLM), to S. Norman Stark, appellant, after his entry card was drawn first in a simultaneous drawing. The lands in appellant's lease had previously been included in oil and gas lease W-22554, issued in 1970 and assigned to Gulf Oil Corporation (Gulf) in 1973. The lands were posted as available because lease W-22554 presumably had terminated by operation of law for failure of Gulf to pay the annual rental on or before the lease anniversary date, February 1, 1975.

When Gulf submitted its 1976 rental payment, it was notified that its lease had terminated the previous year. Gulf then informed the BLM State Office by letter dated January 16, 1976, that: (1) it

had mailed check no. 00051 dated January 2, 1975, to BLM for the 1975 rental on January 7, 1975; (2) this check was still outstanding in its accounts; (3) it enclosed a mailing control copy of the check; (4) it had sent to BLM on January 24, 1975, a receipt request to determine whether payment had been received; and (5) this receipt was returned to Gulf by BLM stamped "RECEIVED" on January 28, 1975, but with no indication whether the check had been received. <sup>1/</sup> Gulf then inquired why its lease had terminated and whether it should stop payment on check no. 00051.

Following telephone discussions and a submission by Gulf of rental for 1975 and 1976, the BLM State Office issued a decision dated February 17, 1976, reinstating Gulf's oil and gas lease W-22554 "[i]n view of the above [the allegations by Gulf that it had timely submitted the 1975 rental payment], and the fact we do not know whether or not the check dated January 2, 1975, was received in this office." By decision also dated February 17, 1976, the BLM State Office canceled appellant's lease W-50456 because "the lands in this lease are under oil and gas lease, W 22554, which issued February 1, 1970." Appellant then filed this appeal.

Appellant argues that BLM had no authority to reinstate Gulf's lease because the requirements of 30 U.S.C. § 188(c) (1970) were not met. He points out that Gulf did not pay the rental within 20 days of the 1975 anniversary date; that Gulf did not file a petition for reinstatement; that Gulf did not show its failure to pay timely either to be justifiable or not due to a lack of reasonable diligence; and that his lease was valid, thus preventing reinstatement of Gulf's lease. In addition, appellant requests that we hear oral argument on these issues.

[1] The record for oil and gas lease W-22554 does not show receipt by BLM of a 1975 rental payment. Gulf has also admitted that the alleged January 2, 1975, check was never cashed. Without more, it must be concluded that the 1975 rental was not timely paid and that Gulf's lease automatically terminated by operation of law when it failed to pay its rental on or before February 1, 1975. 30 U.S.C. § 188(b) (1970).

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<sup>1/</sup> All documents and letters arriving at the Wyoming State Office are routinely stamped with the name and place of the office, the date and time of receipt, and the word "RECEIVED." It appears that this is the stamp which was applied to Gulf's inquiry, indicating that the inquiry was received, rather than the check which was the subject of the inquiry.

In accordance with 43 CFR Subpart 3112, appellant's lease was issued on May 15, 1975. Under the statute and the regulations, an oil and gas lease terminated because of nonpayment of rent may not be reinstated if a valid lease has been issued for the same land prior to the filing of a petition for reinstatement. 30 U.S.C. § 188(c) (1970); 43 CFR 3108.2-1(c)(3). The earliest document submitted by Gulf to BLM that can be considered a petition for reinstatement is the letter dated January 16, 1976, eight months after appellant's lease was issued. Based on these facts, the BLM State Office had no authority to reinstate Gulf's lease and to cancel appellant's lease. 30 U.S.C. § 188(c) (1970); 43 CFR 3108.2-1(c)(3); C. J. Iverson, 21 IBLA 312, 321-22, 82 I.D. 386, 390-91 (1975), appeal pending, Iverson v. Frizzell, Civil No. 75-106 (D. Mont., filed October 14, 1975).

The only theory on which the BLM State Office could cancel appellant's oil and gas lease is if Gulf's lease were deemed never to have terminated because payment was received by BLM but erroneously not credited to Gulf's account. From the present state of the record, we are not persuaded that this happened. Unless there is more convincing evidence to support the conclusion that Gulf's lease should be deemed not to have terminated, appellant's lease was properly issued and should not be canceled. Therefore, we set aside the decisions reinstating Gulf's lease and canceling appellant's lease, and remand the cases to BLM for appropriate action consistent with this decision. 2/

Appellant's request for oral argument is denied in view of the conclusion we have reached.

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2/ The BLM decision in this case did not designate the parties as adverse parties who must be served on appeal. Appellant, however, has submitted proof of service of his appeal upon Gulf and a letter from Gulf that it would not enter an appearance in connection with this appeal. Any future decision by BLM should designate the adverse parties in situations such as this.

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 set aside and the case remanded for action consistent with this opinion.

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Joan B. Thompson  
Administrative Judge

We concur:

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Newton Frishberg  
Chief Administrative Judge

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Edward W. Stuebing  
Administrative Judge

