

L. J. ARRIETA

IBLA 76-658

Decided August 10, 1976

Appeal from decision of Montana State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease M 31336.

Affirmed.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease terminated by operation of law for failure of the lessee to pay the annual rental on or before the due date may be reinstated only if the late payment is justifiable or not due to a lack of reasonable diligence. Sending a payment 2 days before the due date does not constitute reasonable diligence, nor does the fact that lessee was unaware of the terms of his lease render his tardiness justifiable.

APPEARANCES: L. J. Arrieta, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

L. J. Arrieta appeals from the May 29, 1976, decision of the Montana State Office, Bureau of Land Management (BLM), denying his petition for reinstatement of oil and gas lease M 31336. The lease had terminated by operation of law due to appellant's failure to pay the annual rental on time. 30 U.S.C. § 188(b) (1970); 43 CFR 3108.2-1(a). The payment was due no later than May 3, 1976, but was not received until May 6, 1976. Appellant states that he was unaware that his lease would be terminated for late payment as this payment was his first one under a federal lease. He asserts that the BLM should have informed him that his lease would be terminated for late payment.

[1] Leases terminated by operation of law for failure to pay the annual rental on time may be reinstated if, among other

things, the late payment is either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1970); 43 CFR 3108.2-1(c). Reasonable diligence is defined by regulation, 43 CFR 3108.2-1(c)(2):

The burden of showing that the failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence will be on the lessee. Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. [Emphasis added.]

Because May 1, 1976, was a Saturday, and the BLM offices were closed that day, the payment had to be received no later than the close of business on May 3, 1976. 43 CFR 3108.2-1(a). Appellant did not send the payment until May 1, 1976, from Culver City, Calif. to Billings, Montana. In William N. Cannon, 20 IBLA 361 (1975), we discussed mailing payments over long distances only 2 days before the due date. We stated:

We cannot say that mailing a payment this distance [Texas to Utah] two days in advance of the due date takes into account "normal delays" in the handling of the mail. Indeed, it is clear that a letter in that instance might arrive on time only if there were no delays of any kind, but rather was handled with extraordinary dispatch.

In this case the payment apparently was mailed on a Saturday from California and was due in Montana on Monday. We cannot say that appellant was reasonably diligent.

Neither can the failure to pay on time be considered justifiable. Appellant asserts, in effect, that he was ignorant of the law, the pertinent regulations, 43 CFR 3108.2-1(a), and the terms of his own lease, section 2(e). The Board has stated in discussing the meaning of justifiable that, "What is clearly not covered are cases of forgetfulness, simple inadvertence or ignorance of the regulations * * *." Louis Samuel, 8 IBLA 268, 274 (1972), appeal dismissed Samuel v. Morton, Civ. No. CV-74-1112-EC (C.D. Calif., August 26, 1974).

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 affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Frederick Fishman
Administrative Judge

