

AGNES M. FRENCH

IBLA 76-693 Decided December 27, 1976

Appeal from a decision of the Montana State Office, Bureau of Land Management, denying appellant's petition for reinstatement of her terminated oil and gas lease (M-25113-B).

Affirmed.

1. Oil and Gas Leases: Reinstatement

If the postmark on the rental payment envelope does not demonstrate reasonable diligence in the lessee's mailing of the payment, the Board will not go beyond it in the absence of exceptional circumstances. Substantial evidence will be required to corroborate any allegation to the contrary. A mere reference to a statement indicating that a check in payment of the rent was issued or sent on a certain date is not, by itself, sufficient.

APPEARANCES: Agnes M. French, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is brought before the Board from a decision of the Montana State Office, Bureau of Land Management (BLM), denying appellant's petition for reinstatement of her oil and gas lease (M-25113-B). The lease had previously terminated by operation of law for failure to pay the annual rental timely. 30 U.S.C. § 188(b) (1970).

Appellant contends in her statement of reasons for appeal that she exercised reasonable diligence in making the rental payment and that, hence, she is entitled to reinstatement. She asserts that the rental payment was in fact mailed 10 days in advance of the due date and that any delay in the conveyance of the payment was the fault of the post office and beyond her control. To corroborate the date of

mailing of the rental payment, appellant submitted a slip of paper containing a note indicating that the rent for lease M-25113 would be due June 1, 1976. At the bottom of the paper the following two notations appear: "paid" and "I sent cheque \$22.50 May 22/76." The record discloses that the anniversary date of the lease when the rental payment was due was June 1, 1976, and that the rent was received by the BLM on June 3, 1976. The envelope in which the payment was mailed was postmarked "LOS ANGELES, CA 900, MAY 31, -PM, 1976." The BLM in the decision below found that these facts, even when coupled with appellant's assertion that the rent check was dated May 21, 1976, were not sufficient to establish reasonable diligence and that the petition for reinstatement should be denied.

The issue raised by this appeal is whether the evidence is sufficient to establish that the late rental payment was not due to a lack of reasonable diligence on the part of the lessee so as to qualify the lease for reinstatement.

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 two 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 Los Angeles to Santa Fe, New Mexico, the day before the payment is due does not constitute reasonable diligence. Maurice E. Mosher, 14 IBLA 287 (1974). A fortiori, the mailing by the appellant of the rental payment from Los Angeles in an envelope postmarked on the day before the payment was due in the State Office in Montana cannot be considered reasonable diligence.

[1] If the postmark on the rental payment envelope does not demonstrate reasonable diligence in the lessee's mailing of the payment, the Board will not go beyond it in the absence of exceptional circumstances. W. A. Fitzhugh (On Reconsideration), 18 IBLA 323, 324 (1975). The date of the postmark will be deemed to be the date of mailing in the absence of substantial evidence to corroborate any allegation to the contrary. W. A. Fitzhugh (On Reconsideration), supra at 324.

This Board has required more than slight corroborative evidence with respect to the date of mailing alleged by the lessee to overcome the evidentiary effect of a postmark indicating a lack of diligence. Evidence which has been considered significant in this regard includes an affidavit by the person in a firm responsible for supervising BLM lease rental payment procedures which affidavit details certain facts indicating the rent was mailed at the time alleged. Elliot and Leon Davis, 26 IBLA 91 (1976). An affidavit by the lessee of delivery of the envelope containing the rental payment to the postman in a timely manner confirmed by a statement of the postman acknowledging receipt of the envelope well in advance of the due date is a part of the evidence found in one of the appeals ordering reinstatement. Paul D. Beaird, Jr., 26 IBLA 79 (1976).

Evidence showing that checks written on the lessee's account in sequence shortly before and shortly after the date of the rental payment check were presented for payment within a few days of being written or prior to the lease rental due date has been identified as one factor tending to corroborate the date of mailing of the rental payment. Elliot and Leon Davis, *supra*; Paul D. Beaird, Jr., *supra*.

Appellant in the present case relies upon the notations "paid" and "I sent cheque \$22.50 May 22/76" as corroborative circumstantial evidence. The notes are inscribed on a slip of paper containing a written reminder of the rental due date for lease M-25113. The origin of the paper is unclear, but it is not a copy of the courtesy notice of rental payment due routinely sent to lessees by the BLM.

In the absence of any affidavit by the lessee to the effect that it was her regular practice to note the date of payment on such a piece of paper at the time of making payment and that the payment was in fact placed in the custody of the post office on such date, we are unable to conclude that appellant has met the burden of establishing that the late payment was not due to a lack of reasonable diligence.

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

I concur.

Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE GOSS DISSENTING

Appellant, under the penalties prescribed in 18 U.S.C. § 1001 (1970), has alleged she mailed her payment May 22, 1976, and has submitted her records as a substantiation. I would grant reinstatement or ask appellant to submit additional evidence in the form of other checks written serially on her account. Elliott Davis, supra, See generally Lone Star Producing Company, 28 IBLA 132 (1976) (dissent).

Joseph W. Goss
Administrative Judge

28 IBLA 285

