

EDGAR C. BENNINGTON (On Reconsideration)

IBLA 76-782 Decided January 31, 1977

Reconsideration of decision affirming the disqualification of appellant's first-drawn simultaneous oil and gas lease offer W-56271.

Edgar C. Bennington, 28 IBLA 65 (1976), sustained.

1. Oil and Gas Leases: Applications: Drawing—Oil and Gas Leases: Rentals

Where, after a drawing of simultaneously-filed oil and gas lease offers, the authorized officer mails a notice to the successful drawee informing him of his priority and the requirement that the advance rental must be paid within the allotted time, which letter is received at his address of record, his subsequent failure to remit the rental timely will disqualify his offer even though he asserts that the person who received and signed for the notice, and then failed to give it to him promptly, was not his designated agent for receipt of mail.

2. Oil and Gas Leases: Applications: Drawing — Oil and Gas Leases: Rentals

After a drawing of simultaneously-filed oil and gas lease offers the requirement that the first year's rental be received in the proper office within the allotted time after notice to the applicant is mandatory, and consideration of excuses for failure to comply

is not permitted. Specifically, no relief will be afforded where the delay is attributed to the Postal Service.

APPEARANCES: Edgar C. Bennington, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Appellant has petitioned for reconsideration of the decision rendered by this Board in the appeal styled Edgar C. Bennington, 28 IBLA 65 (1976). That decision affirmed the rejection of his first-drawn simultaneously-filed oil and gas lease offer because of his failure to remit the annual advance rental within 15 days after his receipt of notice to do so, as required by 43 CFR 3112.4-1.

In his petition ^{1/} Bennington raises again many of the assertions stated in his original appeal concerning the inefficiency and fault of the Post Office in failing to promptly deliver the envelope containing the advance rental payment to the Bureau of Land Management within the prescribed time. He also asserts that his notice to remit the money, sent to him by certified mail from the Bureau's Wyoming State Office, was not received promptly by him because his wife, who is not fluent in English, delayed giving it to him, stating:

* * * your office in Cheyenne sent the certified notice WITHOUT restricted delivery, and she picked it up.

* * * * *

* * * my wife gave me the certified letter several days after she signed for it. She thought it to be an important letter, so she put it in her purse and delivered it when she thought about it.

[1] Petitioner maintains that he has not appointed his wife to be his agent, and because she signed for the certified notice, rather than he, he has yet to receive the notice.

This argument is not sustainable. It is virtually the same as that advanced by the appellant in Robert D. Nininger, 16 IBLA

^{1/} The "petition" was not originally intended as such, rather, it was in the form of a letter of complaint. However, in a subsequent letter dated November 30, 1976, appellant indicated that he wanted it treated as a petition for reconsideration.

200 (1974), which also involved the failure of a successful drawee to timely submit the rental. In that case we noted

[Nininger] argues that a computation of elapsed time from the date when Susan Nininger received the notice is a violation of due process because Susan Nininger is not his agent to receive his mail or to sign his name.

* * * * *

The State Office acted correctly in disqualifying Nininger, in dismissing his protest, and in recognizing Kohlman's priority. As noted in the decision below, the situation is covered by regulation, 43 CFR 1810.2(b), which provides:

(b) Where the authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication under the regulations of this chapter, the person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. An offer of delivery which cannot be consummated at such last address of record because the addressee had moved therefrom without leaving a forwarding address or because delivery was refused or because no such address exists will meet the requirements of this section where the attempt to deliver is substantiated by post office authorities.

The Board's decision affirming the rejection of Nininger's offer was the subject of judicial review in Nininger v. Morton, Civil Action No. 74-1246 (D.D.C.). In its judgment filed March 25, 1975, affirming the Board's decision, the Court stated the following conclusions of law:

* * * * *

2. The regulations 1810.2(b) and 3112.4-1, Title 43, Code of Federal Regulations, are mandatory and apply to the plaintiff. Said regulations do not permit the consideration of excuses for failure to remit payment. Regulation 3108.2-1(c), Title 43, Code of Federal Regulations, does not apply to the instant matter.

3. Under Section 31 of the Mineral Leasing Act, 30 U.S.C. 188 and the pertinent regulation 3108.2-1(c)(2), Title 43, Code of Federal Regulations, even if a lessee seeking reinstatement is diligent, the failure of a relative to notify him of delivery is not an excuse which will justify his late payment. Therefore, plaintiff cannot prevail as a matter of law even if the Court were to find 43 C.F.R. 3108.2-1(c)(2) was applicable.

4. The notice was properly delivered by mail to plaintiff's home and his excuse that his daughter was not his agent for receipt of mail is insufficient as a matter of law. [Emphasis added.]

[2] Moreover, this Board has specifically rejected the argument that late payment of the rental should be excused when the delay was caused by, or attributed to, the Postal Service. Frank De Jong, 26 IBLA 327 (1976); John Paul Pratt, 24 IBLA 110 (1976); Mar-Win Development Co., 20 IBLA 383 (1975). Therefore, the BLM State Office properly disqualified appellant from receiving 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 of the Board, 28 IBLA 65, is sustained.

Edward W. Stuebing
Administrative Judge

We concur.

Newton Frishberg
Chief Administrative Judge

Martin Ritvo
Administrative Judge

