

CISSIE A. REINAUER

IBLA 76-786

Decided March 30, 1977

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneously filed oil and gas lease offer W-55811.

Affirmed.

1. Oil and Gas Leases: Applications: Generally

An oil and gas lease offer is properly rejected where the applicant fails to date the simultaneous oil and gas drawing entry card.

2. Oil and Gas Leases: Applications: Generally

The drawing of an offer for a noncompetitive lease creates no vested rights in the offeror, the offeror's tender of advance rental payment notwithstanding.

APPEARANCES: Wayne E. Thomas, Esq., of Thomas and Burdett, Hereford, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Cissie A. Reinauer appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting her simultaneous oil and gas lease offer W-55811. Appellant's drawing entry card was the first card drawn for parcel Wy-27 of List No. 6-76, and, upon notification of her status as successful drawee, appellant tendered to the Wyoming State Office, BLM, an advance rental payment in the amount of \$ 357. Thereafter, by decision dated September 3, 1976, BLM informed appellant that her offer was rejected owing to her failure to date the drawing entry card offer form.

Appellant protests the decision below alleging that her offer, although undated, was in substantial compliance with the applicable regulation and further claiming to have a fixed and valuable property interest in the leasehold by virtue of her status as first drawee and by virtue of BLM's acceptance of her advance rental payment. Appellant also states that no injury resulted from her omission of the date and that the omission should therefore be disregarded. We find appellant's claims to be without legal merit.

[1] Under section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1970), when the Secretary of the Interior determines that an oil and gas lease is to be issued for a particular tract, the lease must be issued to the first qualified applicant. McKay v. Wahlenmaier, 226 F.2d 35, 47 (D.C. Cir. 1955). Appellant is not a qualified applicant, as the applicable regulation, 43 CFR 3112.2-1, plainly states that drawing cards must be "fully executed." Since the card provides a space for the date, the date must be included if the card is to be "fully executed" is required by the regulation. As we have noted in the past, the date is important because it indicates that, as of the particular date, the offeror certifies all statements made on the card. John R. Mimick, 25 IBLA 107 (1976); Ray Flamm, 24 IBLA 10 (1976). The fact that the month and year appear on the postmarked envelope in which the card was mailed is of no consequence. It is also irrelevant that appellant provided the other information required. Mimick, supra at 109.

[2] Appellant claims that the BLM, by allowing her to participate in the drawing, and by accepting her advance rental payment, has made a "final" award of the lease. This contention is mistaken, as the drawing of an offer for a noncompetitive lease in a simultaneous oil and gas lease drawing creates no vested rights in the offeror, Paula J. Jones, 24 IBLA 76 (1976), and the offer of an unqualified applicant must be rejected whether the defect is discovered before or after the drawing. McKay, v. Wahlenmaier, supra; Mimick, supra. Neither the act of entering the card in the drawing nor the retention of an advance rental check will cure the defect in the offer where there is, as here, a case of noncompliance with a mandatory regulation.

Appellant has requested opportunity to make oral argument before this Board. The request is denied. 43 CFR 4.25. Appellant has already been afforded ample opportunity to submit arguments on appeal.

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.

Douglas E. Henriques

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Administrative Judge

We concur:

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Joan B. Thompson  
Administrative Judge

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Joseph W. Goss  
Administrative Judge

