

ROSEMARY WEAVER, ET AL.

IBLA 77-108

Decided May 26, 1977

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, denying appellant's petition for reinstatement of oil and gas lease W 37297.

Affirmed.

1. Oil and Gas Leases: Reinstatement! ! Oil and Gas Leases: Rentals

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays. A lessee who mails payment from New York City to Cheyenne, Wyoming, 2 days before the anniversary date is not reasonably diligent.

APPEARANCES: James W. McDade, Esq., McDade and Lee, Washington, D.C., for appellants.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This is an appeal from a decision of the Wyoming State Office, Bureau of Land Management (BLM), denying appellant's petition for reinstatement of a noncompetitive oil and gas lease W 37297. The lease was terminated automatically, by operation of law, for failure to pay the annual lease rental on or before December 1, 1976, the anniversary date of the lease. 30 U.S.C. § 188(b) (1970); 43 CFR 3108.2-1(a).

Payment of the lease rental was received on December 3, 1976, in Cheyenne, Wyoming. The envelope in which it was mailed was metered on November 29, 1976, but postmarked on November 30. The rental payment was mailed from New York City.

Appellants state that all mail is now delivered by air, and the mailing of the check on that date (November 29) was sufficiently in advance of the deadline for paying rent. Appellants

concede that the "performance of the Post Office in the past two or three years in the delivery of mail has been * * * notoriously inept. * * *" They argue that the concept of "normal delays" no longer has a legal meaning. We disagree.

[1] 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. 43 CFR 3108.2-2. The metering of the envelope on November 29 does not incontrovertibly establish its having been mailed on that date, and it may not have been as it was not postmarked until November 30, 1976. Nevertheless, mailing 2 days prior to the anniversary date is not a sufficient amount of time for mail to reach Cheyenne, Wyoming, from New York City and does not constitute "reasonable diligence" as it does not take into account "normal delays" in the handling of the mail. The Board has rejected other reinstatement applications where the payment was mailed 2 days before the due date, and had a shorter distance to travel than in the case at hand. L. J. Arietta, 26 IBLA 188 (1976); William M. Cannon, 20 IBLA 361 (1975). There is nothing in the record to establish that the failure to pay the rental timely was "justifiable" within the ambit of 30 U.S.C. § 188(c) (1970).

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.

Frederick Fishman
Administrative Judge

I concur:

Anne Poindexter Lewis
Administrative Judge

ADMINISTRATIVE JUDGE THOMPSON CONCURRING:

The only issue raised by appellants is whether their mailing of the rental payment should be considered as exercising "reasonable diligence." I agree with appellants that the concept of reasonable diligence does not require extraordinary measures. Reasonableness is a standard of behavior somewhat less than "careful" or "extraordinary." Furthermore, there has been no definition or standard of a "normal" delay in the mail under 43 CFR 3108.2-2. Appellant asserts that mailing at least 2 days prior to the due date in this case was sufficient time for the mail to reach Cheyenne, Wyoming, from New York City.

Rather than adhere to a strict and rigid 2! day before! due! date rule as set forth in L. J. Arietta, 26 IBLA 188 (1976), and William M. Cannon, 20 IBLA 361 (1975), which, in effect, overruled prior Board decisions holding that mailing 2 days in advance of the due date could be reasonable diligence, I suggest that each case must be decided on its own facts. Though appellants asserted reasonable diligence in this case, they did not show supporting facts aside from their own assertions. Relevant facts would include information from the Postal Service concerning the normal expected delivery date between the two cities, and what normal delays in time might be expected, as contrasted with other delays occasioned by unexpected events, such as labor shortages and the like, which I would not consider "normal" within the meaning of regulation 43 CFR 3108.2-2. Accordingly, I reluctantly concur in the result in this case.

Joan B. Thompson
Administrative Judge

