

LAURA J. SPANGLER

IBLA 77-57

Decided May 31, 1977

Appeal from decision of the Idaho State Office, Bureau of Land Management, denying a protest and petition to amend the filing date of acquired lands oil and gas lease offers I-12709 and I-12710.

Affirmed.

1. Applications and Entries: Amendments! ! Applications and Entries: Filing ! ! Mineral Leasing Act for Acquired Lands: Generally

Where noncompetitive acquired lands oil and gas lease offers were allegedly deposited on the cashier's counter in the proper Bureau of Land Management office prior to close of business on a certain day, yet were not discovered by a Bureau employee until 6 a.m. the following day and date! time stamped as filed at 10 a.m. on such day, a protest and petition to amend the filing date of such offers are properly denied where the offeror produces no evidence to support her claim other than her personal affidavit; where no Bureau employee saw the offeror in the Bureau office at the time she claimed to have been there; where no Bureau employee saw the offers on the counter until the following day; and where third! party rights are involved.

APPEARANCES: William F. Ringert, Esq., Anderson, Kaufman, Anderson & Ringert, Boise, Idaho, for appellant; Eugene A. Reidy, Esq., Moran, Reidy & Voorhees, Denver, Colorado, for Esdras K. Hartley, adverse party.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Laura J. Spangler has appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated November 12, 1976, denying her protest and petition to amend the filing date of acquired lands oil and gas lease offers I-12709 and I-12710.

The BLM decision stated that the two offers were found on the cashier's desk at 6 a.m. on the morning of October 15, 1976, and that BLM had no alternative but to date! time stamp them officially filed as of 10 a.m. October 15. Appellant contends that the offers were filed on October 14, 1976, and should have been date! time stamped on such date.

The dispute over the filing date has arisen because of another offer (I-12712) which was also date! time stamped at 10 a.m., October 15, 1976. Such offer was made by one Esdras K. Hartley. Mr. Hartley's offer to a large extent encompassed lands covered by appellant's two offers. The BLM decision indicated that when its decision became final a public drawing would be necessary to determine the order of consideration among lease offers I-12709, I-12710 and I-12712, because they had been filed simultaneously.

Appellant's recollection of the events of October 14, 1976, are set forth in an affidavit in the record in which she states:

On October 14, 1976, I entered the United States Courthouse and Federal Building at 550 West Fort Street in Boise, Idaho, at 3:50 p.m. I checked the time by the clock over the elevators in the main lobby on the ground floor to be sure I was on time with Offers to Lease (Form 3110-3), which I had in my possession and which I intended to file in the Land Office (Idaho State Office of the Bureau of Land Management). It took me approximately two or three minutes to get to the elevator and to ride to the third floor. I entered Room 390 on the third floor at approximately seven or eight minutes before 4:00 p.m. The main double doors to Room 390 were open, and those doors are the ones through which I entered Room 390.

At the time I entered Room 390, Willa Neff was on the telephone and using the viewer beside her desk. Joan Bain was at her desk, which was on my right as I entered the doors; she was concentrating on the work on her desk and did not look up. I did not see anyone else in this section of Room 390.

I walked to the cashier's counter and saw no one at the desk directly behind the counter. I leaned over the counter to see if anyone was at the next desk, and saw no one at that desk or in the area behind it. I assumed that the personnel in the cashier's section probably had gone to the Xerox room or were attending to some other business in another area of the third floor and, therefore, I left the two Offers to Lease, together with a check in the amount of \$ 1,222.00, on the cashier's counter. I had filed similar Offers to Lease in the same manner on past occasions and those Offers always had been filed on the day that I left them there. As I left, I looked at Mrs. Neff and Mrs. Bain again, in anticipation of waving to them, but they both were still busy. I left Room 390 by way of the double doors.

Appellant telephoned BLM on the morning of October 15, 1976, and learned that the offers had not been discovered until 6 a.m., October 15, 1976, and, therefore, were date! time stamped as of 10 a.m., October 15, 1976.

On appeal appellant asserts that on previous occasions she has deposited lease offers on the counter of the cashier's window and that they have always been regarded as filed on such day. Appellant states that the applicable regulation is 43 CFR 3000.5-1 which reads:

Documents must be filed in the proper office. A document will be considered filed when it is received in the proper office during business hours.

Appellant contends that her lease offers were received in the proper office during business hours on October 14, 1976, and as such should have been date! time stamped as of such date. The official office hours are from 10 a.m. to 4 p.m. 43 CFR 1821.2-1.

Appellant directs our attention to the case of Norma J. Rose, 75 I.D. 37 (1968), involving a filing question in which it was held that the placing of a document by the post office in a post office box, where the land office customarily received its mail, during the hours in which the land office is open to the public for the filing of documents constitutes delivery to and receipt by the land office.

However, in Rose there was a presumption that the document had been placed in BLM's post office box prior to 4 p.m. on the necessary date. Therefore, the issue for resolution in Rose was whether or not such deposit of the mail in the post office box was equivalent to filing it in the land office. In the present case the presumed fact

in Rose is actually the issue. While appellant swears that she placed her offers on the cashier's counter prior to 4 p.m. on October 14, 1976, the actual time of receipt of the offers is in dispute

In a memorandum to the Board from the Acting Idaho State Director, BLM, dated November 16, 1976, the Acting State Director made the following statement:

Mrs. Spangler has been a public checker for many years and is well acquainted with the procedures in filing oil and gas lease offers, desert land entry applications, and many other functions of the office. She knows that there is a bell placed on the public counter to call for help if no one is in view at the time she is filing documents or needs help in requesting copy work, paying rentals, etc. According to our public room employees she has used this bell many times. She claims she was in the public room at seven or eight minutes to 4:00 P.M. on the afternoon of October 14, 1976 and left the subject offers on the cashiers counter. There were four employees present in the public room and in view at the alleged time. If she was there at that time, she should have rung the bell for assistance when she knows the importance of obtaining a filing time of priority. The four employees have each stated that they did not see Mrs. Spangler at the time she claims to be in the public room. As each of the four employees left the office that evening, they passed within two feet of the cashiers counter which is white in color. The acquired lease offers, yellow in color, would have been noticeable surely to one of them. They did not remember seeing the lease offers as they left that evening. For two hours after closing time of the public room, we know that access to the public room was available because one of the doors was open so that an employee who worked two hours overtime that evening could have access to the survey rooms.

Mr. Esdras K. Hartley, adverse party, was in the public room on the morning of October 15, 1976 to file his lease offer I-12712. He asked if there were any filings that morning and was told that if there were any filings, xerox copies of such would be placed in open view on the public counter as soon as the mail was opened and all applications time stamped and

serialized. It was immediately noticed that this lease offer was in conflict with the two lease offers filed by Mrs. Spangler.

Appellant states that she deposited the offers and her check on the counter prior to 4 p.m., but that she was seen by no one, and, in fact, none of the BLM employees working in the office at the time she claims to have entered actually did see her.

[1] Since the offers were not discovered on the counter until 6 a.m. on October 15, 1976, and no BLM employee saw appellant in the office at the time she claims to have been there, and no BLM employee saw the offers on the counter when they left the office on October 14, 1976, the burden is on appellant to establish that the offers were, in fact, filed before 4 p.m. on October 14. Appellant has presented no evidence to support her contention concerning her filing of the offers other than her personal statement. Such a statement is insufficient to meet appellant's burden. For that reason, based on the facts of record, there is not a sufficient predicate to find that appellant's offers were filed prior to 4 p.m. on October 14, 1976.

We need not make any specific findings concerning the filing of appellant's offers, except to find that such offers were properly date! time stamped, 10 a.m., October 15, 1976.

On appeal Mr. Esdras K. Hartley, in addition to opposing appellant's request that her offers be considered filed on October 14, 1976, argues that appellant's offers should be rejected in their entirety because such offers were not accompanied by the underlying instruments of conveyance in favor of the United States establishing that such lands are acquired lands. Mr. Hartley cites no authority for such a contention nor are we familiar with any statute or regulation requiring such a filing. It is true that BLM may require an offeror to submit certain title information as a precondition to lease issuance, if BLM has insufficient title information, Jean Oakason, 22 IBLA 33 (1975), however, such was not the case herein.

Mr. Hartley also submits that appellant's application I-12710 is defective because it fails to describe certain lands covered thereby by metes and bounds as required by 43 CFR 3101.2-3(a), and, therefore, such application should be rejected in its entirety. Such a determination is properly made by BLM in the first instance.

Appellant has requested a hearing to "develop fully the facts" of the present appeal. The facts have been sufficiently set forth

and it does not appear likely that appellant could supply any additional evidence which would result in a different conclusion. The request for a hearing is denied.

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.

Frederick Fishman
Administrative Judge

I concur:

Edward W. Stuebing
Administrative Judge

ADMINISTRATIVE JUDGE RITVO DISSENTING:

I must respectfully dissent from the dismissal of Spangler's protest for several reasons. First, it seems to me it is premature to rule on whether Spangler earned priority by filing on October 14. The simplest procedure would be to hold the drawing subject to her protest. If she wins, then the question of whether she filed on the one day or the other is moot. If she loses, then her contention that she filed on October 14 would have to be considered. If that is the result of the drawing, I would direct that a hearing be held in order to establish the facts more fully. The majority refuses to accept appellant's unsupported statement as sufficient to meet her burden of persuasion. It offers no authority for this proposition. I would point out that a statement by a person that he did something is direct positive evidence which is sufficient to support a jury finding in favor of the proponent. Jones, Evidence, 6th ed. 1972 § 829.4, 29.11.

The Department, too, has accepted an uncontradicted statement that a filing fee was placed in the "after hours" box on the last day for filing although it was stamped as received at 10 a.m. the next business day. Darling v. Lewellen, A-30885 (June 13, 1968).

In other cases involving an alleged discrepancy between the time of filing as alleged by the filer and the time shown by the time stamp, it has been held that the official time noted on an application must be accepted as conclusive in the absence of positive or convincing evidence that the time is wrong. George Conley, A-28128 (January 18, 1969); C. A. Fleetwood, A-28250 (June 3, 1960); Kenneth J. Kadow, A-30053 (October 5, 1964); Margaret A. Andrews, 64 I.D. 9 (1957).

In Fleetwood, it was noted: "There is no indication of when or how the filing was made or any direct statement that it was made at a particular time." Here, of course, there is a direct sworn statement that Spangler's application was filed before 4 p.m. on October 14. Such a statement is positive evidence but whether it is convincing depends upon the finder of fact.

To assist the finder of fact in reaching a conclusion, a hearing would be extremely helpful. There are many unresolved factual issues in the record as it stands. There is no doubt but that an application was filed. This is not a case of a document that has never appeared physically but which a party contends she mailed. Here we have an application that was found in the office at 6 a.m. on October 15 at the place Spangler says she placed it. There is no evidence that she was in the office at any time other than when

she says she was. The employees who did not see her before 4 p.m. also did not see her before 4:15 p.m. or notice the lease offers on the counter when they left at that time. There is no evidence that she was in the office after 4:15 p.m. when access was presumably available through a door left open for an employee who was to work several hours overtime. Nor is there any evidence from that employee that he (or she) saw Spangler in the office after 4:15 p.m.; yet the offer was left on the counter at sometime. I suggest that we can not blithely say we need not decide when it was filed in the face of a direct statement that it was filed at a certain time and no direct evidence to the contrary. A hearing could be very helpful in resolving some of these questions if Spangler does not gain priority as the result of the drawings which, as I have suggested, should be held first.

Martin Ritvo
Administrative Judge

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