

ADOLPH F. MURATORI

IBLA 77-266

Decided June 21, 1977

Appeal from a decision of the Utah State Office, Bureau of Land Management, denying applicant's petition for reinstatement of oil and gas lease U-24163-M.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Reinstatement:
Generally

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays. Instances of forgetfulness, simple inadvertence or ignorance of the regulations are not covered. Where payment is mailed from Binghamton, New York, to Salt Lake City, Utah, 1 day before the anniversary date the lessee cannot be said to be reasonably diligent.

2. Estoppel--Oil and Gas Leases: Reinstatement--
Reinstatement: Generally

An estoppel of the Government to refuse acceptance of late rental payments is not created where in the past the BLM accepted rental payments after the anniversary date pursuant to 43 CFR 3103.3-2(e)(1) providing if the office to receive payment is closed on the anniversary date, payment will be considered timely if received on the next official working day.

3. Estoppel--Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

A prerequisite of the reinstatement process is the tender of payment within 20 days of the anniversary date which protects the right of the lessee to petition for reinstatement. The check is then deposited in an unearned account to create a record of it, and bring it under accounting control, however, depositing of the check does not create an estoppel against the Government.

APPEARANCES: Joseph B. Meagher, Esq., of Aswad & Ingraham, Binghamton, New York.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Adolph F. Muratori appeals from a decision of the Utah State Office, Bureau of Land Management (BLM), denying his petition for reinstatement of oil and gas lease U-24163-M. The lease was terminated automatically by operation of law, for failure to pay the annual lease rental on or before February 1, 1977, 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 by the BLM on February 3, 1977. The envelope in which it was sent was postmarked Binghamton, New York, P.M., January 31, 1977. In his petition for reinstatement Muratori offered the excuse that, "I am not experienced in holding oil leases. * * * Besides, I had lost the bill and temporarily forgotten the due date."

In his Statement of Reasons appellant asserts on January 30, 1975, he mailed a renewal payment which was received by the BLM on February 3, 1975, on this same lease. At that time his lease was not canceled for failure to pay the annual rental on or before the anniversary date. Furthermore, this occurrence led appellant to believe BLM would accept a lease renewal payment if postmarked before the anniversary date of February 1.

[1] Reinstatement of an oil and gas lease is allowed where failure to pay the rental on the anniversary date is shown to be either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 43 CFR 3108.2-1(c). A failure to exercise reasonable diligence in payment of rental is "justifiable" when caused by a factor which is ordinarily outside of the control of the lessee, and occurring in close proximity to the anniversary date of the lease. Pauline G. Thornton, 17 IBLA 251 (1974). Sufficiently

extenuating circumstances must be present so as to affect the lessee's actions. Pauline G. Thornton, supra; Louis Samuel, 8 IBLA 268 (1972); see, John Rusiniak, 10 IBLA 74 (1973); R. G. Price, 8 IBLA 290 (1972). The word "justifiable" refers to a limited number of instances, where owing to factors ordinarily outside of the individual's control, the reasonable diligence test could not be met. What is clearly not covered are instances of forgetfulness, simple inadvertence or ignorance of the regulations. Louis Samuel, supra.

The Board has previously held the mailing of a rental payment 1 day before the anniversary date is not an exercise of reasonable diligence where mailed from Chicago, Illinois, to Salt Lake City, Utah, Henry Carter, 24 IBLA 70 (1976); from eastern Texas to Salt Lake City, Utah, William N. Cannon, 20 IBLA 361 (1975); and from California to Montana, Joseph Wachter, 22 IBLA 95 (1975). Nor is a mailing period of 2 days from Oklahoma City, Oklahoma to Silver Spring, Maryland, an exercise of reasonable diligence. Eason Oil Co., 16 IBLA 109 (1974). The mailing of a rental payment 1 day before the anniversary date from Binghamton, New York, to Salt Lake City, Utah, is not an exercise of reasonable diligence.

[2] Appellant asserts estoppel of the BLM to refuse acceptance of the rental payment received on February 3, 1977, because the BLM had previously accepted what appellant believes to be late rental payment on this lease in 1975.

February 3, 1975, was a Monday, which means February 1, 1975, occurred on a Saturday, a day on which BLM offices are closed. 43 CFR 3103.3-2(e)(1) states "if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working date shall be deemed to be timely." This regulation confers a benefit upon lessees in providing for acceptance of lease rental payments after the anniversary date when the anniversary date falls upon a day when the BLM office is closed. This regulation cannot be read to create an estoppel against the Government in refusing to accept late lease rental payments when BLM offices are open on the anniversary date.

[3] Appellant also asserts estoppel on the basis of the BLM having retained his \$40 check for the rental payment during the appeal process. A prerequisite of the appeal process is the tender of payment of the rental within 20 days of the anniversary date. 43 CFR 3108.2-1(c). This is done to protect the right of the lessee to petition for reinstatement. The check is then deposited in an "unearned" account to safeguard the payment, to create a record of it, and to bring the payment under accounting control while the appeal is pending. The depositing of the rental check in these circumstances does not create an estoppel against the Government. John J. Nordhoff, 24 IBLA 73 (1976).

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

We concur:

Martin Ritvo
Administrative Judge

Edward W. Stuebing
Administrative Judge