

RICHARD L. TRIPLETT II

IBLA 77-491

Decided October 31, 1977

Appeal from decision of the Nevada State Office, Bureau of Land Management, denying petition for reinstatement of noncompetitive oil and gas lease N 6456 which terminated automatically by operation of law for failure to pay rent timely.

Affirmed.

1. Oil and Gas Leases: Reinstatement

A lessee generally has not demonstrated reasonable diligence where the rental payment was postmarked in California the day before it was due in Nevada. An allegation that the payment was mailed prior to the postmark date must be corroborated by sufficient evidence. An assertion that the rental check was mailed 2 days before the due date and allegations of poor service by the local post office are not sufficient alone to overcome the postmark date.

APPEARANCES: Richard L. Triplett II, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Richard L. Triplett II appeals from the July 1, 1977, decision of the Nevada State Office, Bureau of Land Management (BLM), denying his petition for reinstatement of noncompetitive oil and gas lease N 6456 which had terminated automatically by operation of law for failure to pay rental on or before the anniversary date, June 1, 1977. The rental payment was received by the State Office on June 2, 1977, and was postmarked May 31, 1977, in Beverly Hills, California.

In his Statement of Reasons, appellant asserts he placed the payment in the mailbox on May 30, 1977, prior to 11:30 a.m. which is the stated pickup time for mail from that receptacle on Sundays and holidays. May 30, 1977, was a Federal holiday. Appellant concludes the U.S. Postal Service "did not diligently perform their Congressionally constituted duties" and as a result his payment remained in the mailbox for approximately twenty-four hours. In his Petition for Reinstatement, appellant states that Mrs. Sherry Yadley witnessed his depositing of the payment in the mailbox.

[1] Any noncompetitive oil and gas lease on which there is no well capable of producing oil or gas in paying quantities terminates automatically by operation of law if annual rental is not paid on or before the anniversary date. 30 U.S.C. § 188(b) (1970). Congress has determined that such a terminated lease may be reinstated only if, among other requirements, the lessee shows that his failure to pay on time was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1970).

Reasonable diligence requires that the lessee show he deposited the rental payment in the mail sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). Generally, mailing a rental payment in California the day before it is due in Nevada, as the postmark here indicates, is not an exercise of reasonable diligence. Rudolph F. Muratori, 31 IBLA 39 (1977).

Ordinary, the postmark on the rental payment envelope would be determinative of the appellant's reasonable diligence. However, where the appellant alleges that he deposited the payment in the mail earlier than the postmark date, corroborative evidence supporting the appellant's allegation will be considered to establish reasonable diligence. Reasonable diligence has been found where a lapse of time occurred between the alleged date of mailing by the lessee and the actual postmark when the following evidence was submitted: statement by Postal Service officials explaining possible reasons for the date discrepancy, Elliot Davis, 26 IBLA 91 (1976); statement of lessee that he mailed prior to postmark date, statement of Postal Service official explaining possible reasons for discrepancy, Paul D. Beard, Jr., 26 IBLA 79 (1976); and a statement by lessee and the local postmaster, A. Helander, 25 IBLA 54 (1976). Absent corroboration of this nature the BLM was correct in denying reinstatement. David W. Gregg, 32 IBLA 293 (1977).

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.

Martin Ritvo
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joan B. Thompson
Administrative Judge

