

DAVID R. SMITH AND DARLA L. SMITH

IBLA 77-443

Decided December 5, 1977

Appeal from decision of Wyoming State Office, Bureau of Land Management, holding oil and gas lease W 24238-D to have terminated by operation of law and denying petition for reinstatement.

Affirmed.

1. Accounts: Payments -- Administrative Procedure: Generally -- Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

The timeliness of filing Federal tax returns and payments and of making rental payments for Federal oil and gas leases are governed by different statutes and regulations and are not the same. Receipt in the proper Bureau of Land Management office determines the timeliness of rental payment, whereas the Internal Revenue Service uses a postmark date. The postmark date is relevant in considering a Federal oil and gas lease rental only to determine if the lessee exercised reasonable diligence so as to warrant reinstatement of a lease terminated for failure to pay the rental timely.

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

In determining whether an oil and gas lessee exercised reasonable diligence to warrant reinstatement of a terminated lease the postmark date on the rental payment envelope is generally deemed the date of mailing unless there is satisfactory evidence to support an assertion that mailing occurred at an earlier date.

3. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

Generally, the mailing of a rental payment for an oil and gas lease 1 day before the payment date cannot be considered reasonable diligence to warrant reinstatement of a terminated lease.

4. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

Receiving the Bureau of Land Management's courtesy rental due notice too late to meet a lessee's usual business practice for mailing checks is not a justifiable excuse for delay in transmitting the payment to warrant reinstatement of a terminated lease.

5. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

The inadvertent or negligent failure of an employee or other person entrusted to mail payments for an oil and gas lessee is not a justifiable excuse for delay in transmitting the payment to warrant reinstatement of a terminated lease. Nor is the fact his prior payments have been timely filed such an excuse.

APPEARANCES: David R. Smith, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

By a notice dated June 2, 1977, David R. Smith and Darla L. Smith, holders of oil and gas lease W 24238-D, were informed that the lease had terminated by operation of law for failure to pay rental timely, and were advised of the right to petition for reinstatement of the lease. A petition was filed by Darla L. Smith explaining the delay. On June 20, 1977, the Wyoming State Office, Bureau of Land Management, denied the petition and held the lease to have terminated. The decision found reasonable diligence had not been exercised, nor was there a justifiable excuse for the delay. This appeal followed.

The explanation afforded in the petition for reconsideration for the delay in payment is as follows:

All of our checks are dated for the 15th or the last day of the month. The checks are then mailed five days before

they are due. We received your notice too late to include it in the checks for the 15th of the month, so we wrote it for the 31st of the month. The check was taken to the mailroom at my husband's company on the morning of Friday the 27th of May for mailing. In checking at the company we can only assume that with the holiday coming up, the mail room personnel fell down on getting the mail out. I realize that this is not one of the best reasons for explaining the lateness of the payment, but it is the only one there is. In the five years that we have been making this payment there has never been any problem and I hope that this one day being late will not be a problem at this time.

[1] On appeal, among other matters, appellants refer to language in the Bureau's decision concerning payment "in a timely manner." They contend that since their payment was admittedly postmarked on the 31st of May and filed on June 3 (actually it was June 2), payment was made in a timely manner. They point to the rules of the Internal Revenue Service which look at the postmark of the letter to determine if it is mailed on time, and they contend the same rule should apply here.

The timeliness of filing tax returns and payments and of making rental payments for Federal oil and gas leases are governed by different statutes and regulations and are not the same. The Mineral Leasing Act, 30 U.S.C. § 188(b) (1970), requires payment of rental "on or before the anniversary date of the lease" or the lease "shall automatically terminate by operation of law." It is the receipt of the payment in the proper office of the Bureau of Land Management which is the determinative fact on the timeliness of the payment, whereas the Internal Revenue Service uses the mailing date as the governing date. 43 CFR 1821.2-2(d); Edward Malz, 24 IBLA 251, 83 I.D. 106 (1976). The Internal Revenue Service rules, therefore, are not applicable here.

Reinstatement of a terminated oil and gas lease is circumscribed by the statutory requirement that it be shown to the satisfaction of the Secretary of the Interior that the failure to pay timely "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." 30 U.S.C. § 188(c) (1970).

The date of mailing becomes significant in Federal oil and gas lease rental cases only in considering a petition for reinstatement of a terminated lease to determine if there was reasonable diligence on the part of the lessee in transmitting the payment. Regulation 43 CFR 3108.2-1(c)(2) provides in part that 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."

[2] The certain facts in this case are the date of the postmark of the envelope for the payment, May 31, 1977; the Bureau's date-received-stamp on the envelope showing June 2, 1977, 10 a.m.; ^{1/} and the May 31 date shown on the check. The postmark date is generally deemed the date of mailing unless there is satisfactory evidence to support an assertion that mailing occurred at an earlier date. E.g., Edward Malz, 33 IBLA 22 (1977); Paul D. Beaird, Jr., 26 IBLA 79 (1976); A. Helander, 25 IBLA 54 (1976); Francis and Shirley Anglado, 18 IBLA 162 (1974). Appellants have not directly asserted the payment was mailed prior to the postmarked date. they have pointed only to their practice of having Mr. Smith's company mail checks 5 days before they are due and dated, and suggest that personnel in his office "fell down on getting the mail out." This statement does not show that the payment was probably mailed prior to the postmark date. Thus, we must use the May 31 date to determine whether there was reasonable diligence.

[3] The payment was mailed from Orange, California, to Cheyenne, Wyoming, on the day before the anniversary date of the lease. Generally, mailing a payment 1 day before the payment date cannot be considered reasonable diligence as defined by the regulation. E.g., Adolph Muratori, 31 IBLA 39 (1977); Henry Carter, 24 IBLA 70 (1976). Therefore, we must agree with the Bureau that reasonable diligence has not been shown here.

[4] The remaining question is whether there is any "justifiable" excuse for the delay. Appellants stated in the petition that they did not receive the Bureau's courtesy notice in time to use their checks dated the 15th of the month. As the Bureau correctly indicated, this cannot be an acceptable excuse for the delay. The failure of a lessee to receive any courtesy notice or for the notice to be late has not been considered such an excuse. The notices are not required and are only sent as a courtesy. A lessee is responsible for knowing the due date for the payment and reliance on receiving a courtesy notice is not sufficient. Cf. C. J. Iverson, 21 IBLA 312, 82 I.D. 386 (1975); Norman E. Marker, 21 IBLA 144 (1975); Louis J. Patla, 10 IBLA 127 (1973). In any event, appellant did receive the notice in time to mail the payment timely.

[5] The only other excuse indicated by Appellants is that personnel in Mr. Smith's office may have delayed getting out the mail because of the upcoming holiday. The inadvertent or negligent failure of an employee or other person entrusted to mail payments for lessees to do so timely has not been accepted as the type of unforeseen or extenuating circumstance which is necessary to establish a justifiable excuse. Lucyann W. Cameron, 29 IBLA 141 (1977); Mono Power Company, 28 IBLA 289 (1976); James Donoghue, 25 IBLA 280

^{1/} A receipt for the payment is dated June 2, 1977, as well.

(1976); Lucille Lipphardt, 24 IBLA 81 (1976). Also, the fact appellant made timely payments in the past does not excuse his failure to do so this time. Henry Carter, supra. Therefore, we agree the petition for reinstatement was properly 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.

Joan B. Thompson
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Frederick Fishman
Administrative Judge

