

DORIS BELNAP

IBLA 77-342

Decided December 28, 1977

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring oil and gas lease U-10848, terminated for failure to timely pay the annual advance rental and denying a petition for reinstatement of the lease.

Affirmed.

1. Oil and Gas Leases: Rentals -- Oil and Gas Leases: Termination

An oil and gas lease which is in rental status terminates when the annual advance rental is not properly received in the State Office by the anniversary date of the lease.

2. Oil and Gas Leases: Reinstatement

An oil and gas lease terminated for failure to timely pay the annual advance rental can only be reinstated where the lessee shows to the satisfaction of the Secretary, or his delegate, that the failure to timely pay the advance rental was not due to a lack of reasonable diligence, or that such failure was justifiable.

APPEARANCES: Kenneth L. Rothery, Esq., Salt Lake City, Utah, for the appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Doris Belnap appeals from the decision of the Utah State Office, Bureau of Land Management, dated April 11, 1977, which declared that oil and gas lease U-10848 had terminated by operation of law because of appellant's failure to pay the annual advance rental on or prior to the anniversary date, as required by the applicable statute and regulations. See 30 U.S.C. § 188 (1970); 43 CFR 3108.2-1(a). In that same decision the State Office rejected a petition for reinstatement of the lease filed by the appellant.

On appeal, appellant argues first that the rental payment was timely filed and therefore the lease did not terminate, and that any difficulty that did result in the filing was the result of the internal operating procedures of the Bureau of Land Management. In order to understand appellant's factual contentions we will set out at some length the actions which transpired in the State Office.

Oil and gas lease U-10848 issued on February 26, 1970, with an effective date of March 1, 1970. Annual payments were routinely made until March of 1973, when the payment was not received until March 2. That payment was returned to the appellant with a notification that pursuant to 30 U.S.C. § 188 (1970), the lease had terminated for failure to timely pay the annual rental. The letter advised the appellant of her right to file for reinstatement of her lease under the provisions of the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188(c) (1970). Appellant subsequently petitioned for reinstatement, contending that her husband had mailed the payment on February 28, in a mail box which indicated that one day service could be expected to the Federal Building in Salt Lake City. The State Office, by decision of March 12, 1973, reinstated appellant's lease.

Nothing further transpired, save for the timely submission of the annual rentals, until March of 1977. According to appellant, she was checking her records on March 2nd or 3rd and became concerned that she could not find a receipt for her current rental payment. She thereupon telephoned the State Office and was informed that no payment had been received and her lease had terminated for failure to pay the rental. As appellant states, "I immediately issued a replacement check, assuming my first check had been lost in the mail." The State Office received that check, which was dated March 1, 1977, on March 3. The State Office returned the check noting that the lease had terminated.

During this time appellant states that she spoke to her husband who informed her that he had not mailed the check but had personally delivered it. In order to clear up this matter, appellant's husband visited the State Office on March 16. At that time he told the employees that he had placed the check in the case file. Two searches by employees of the Accounts Section were unable to discover any check in the file. Appellant's husband thereupon requested the file and, according to one of the employees, "I slid the case file through the window he opened and within a second he had found the check on the left side of folder under the rental receipts not attached to anything."

At this point the employees requested the Chief, Minerals Section, to handle the problem. The Chief refused to accept the check on the grounds that it was past 4:00 p.m. and the Office was no longer open for business. 43 CFR 1821.2-1. Appellant's husband contended that he had placed the check in the file on February 22, 1977, feeling that this was proper filing. The Chief, Minerals Section, pointed out to appellant's husband that there was no form in the file to indicate

that he had requested the file from the Docket on February 22. Appellant's husband stated that he had not filled out such a request.

[1] We note at the outset that the applicable regulation, 43 CFR 3103.1-2(a), provides "rentals and royalties under all leases * * * shall be paid to the Authorizing officer of the proper office." Moreover, 43 CFR 1821.2-1(b) provides that "applications and other documents cannot be received for filing by the authorized officer out of office hours, nor elsewhere than at his office." Assuming arguendo that the payment was placed in the case file by appellant's husband, his failure to so notify any Bureau personnel of this fact until after the anniversary date of the lease prevents such deposition of the check in the case file from being accepted as a timely payment. The State Office correctly held that the lease terminated on the anniversary date.

[2] Turning to appellant's petition to reinstate the lease under the provisions of the Act of May 12, 1970, supra, we have noted in the past Congress' expressed desire that the Secretary reinstate a lease "only after he is fully satisfied that the mistake was justifiable or not due to a lack of reasonable diligence on the part of the lessee." H.R. Rep. No. 91-1005, 91st Cong., 2d Sess., at 4. The report continued: "The Committee expects the Secretary of the Interior to examine carefully each petition for reinstatement and to adjudicate favorably only those cases where it is clearly shown that the failure was, as indicated above, either justifiable or not due to a lack of reasonable diligence." (Emphasis supplied.) Id.

In view of the great factual uncertainties which we have set forth above, we cannot say that appellant has clearly shown that the failure to timely make the rental payment was either justifiable or not due to a lack of reasonable diligence. Accordingly, we affirm the decision of the State Office.

Therefore, pursuant to the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

I concur:

Newton Frishberg
Chief Administrative Judge

ADMINISTRATIVE JUDGE FISHMAN DISSENTING:

Although the present record at this time does not support reinstatement of the U-10848 lease, additional evidence may fill the void.

Appellant contends that her husband deposited the rental check on February 22, 1977. BLM records do not show any such receipt. But the check was apparently in the BLM Office prior to its due date. It was found there in the case file on March 16, 1977.

I would remand the case to BLM for the purpose of obtaining evidence from Appellant as to the prior and subsequent checks issued vis-a-vis the February 20 check. If the February 20 check conforms to the proper sequential order, I would reinstate the lease.

A public land claimant need not submit absolute proof. In construing a remedial statute, liberality ought to be accorded Appellant.

Frederick Fishman
Administrative Judge.

