

GENEVIEVE C. AABYE

IBLA 78-92

Decided January 5, 1978

Appeal from decision of the Eastern States Office, Bureau of Land Management, denying a petition for reinstatement of oil and gas lease ES-6540.

Reversed.

1. Oil and Gas Leases: Reinstatement

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. Severe winter weather and other circumstances which prevent the lessee from mailing the rental payment in a timely fashion constitute such a factor which renders the failure to pay the rental timely justifiable.

APPEARANCES: Genevieve C. Aabye, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Genevieve C. Aabye appeals from the November 10, 1977, decision of the Eastern States Office, Bureau of Land Management (BLM), denying her petition for reinstatement of her oil and gas lease ES-6540 which had terminated automatically by operation of law for failure to pay rental on or before the anniversary date, February 1, 1977. Appellant mailed the rental payment on January 30, 1977, in Indianapolis, Indiana. It arrived at the Eastern States Office in Silver Spring, Maryland, on February 4, 1977.

In her petition for reinstatement, Appellant indicated that her husband made the previous rental payments. She states that after his death, she was unaware of the annual rental requirements of her oil and gas lease. Also, she states that bad weather caused

the mail to be delayed and her payment to be late. The BLM Eastern States Office ruled that mailing the payment 2 days before it was due did not constitute reasonable diligence, and that Appellant had not shown any proximate cause between the death of her husband and the late payment of the rental to establish a justifiable excuse.

In her Statement of Reasons, Appellant restates the above circumstances and adds the following one. She states that she was in Connecticut with her daughter and arrived home during the severe winter weather that hit Indiana during January 1977. She states that she lives alone, that she and her neighbors were, in effect, snowbound, and that she was unable to mail the payment until the snow was cleared. She also introduced evidence documenting the severity of the weather, the worst January of record in Indiana.

[1] An oil and gas lease which has terminated automatically by operation of law for failure to pay rental timely may be reinstated only if the lessee can show that the failure was either justifiable or not due to a lack of reasonable diligence, among other things. 30 U.S.C. § 188(c)(1970). In order for a failure to pay rental timely to be justifiable, it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. E.g., Richard C. Corbyn, 32 IBLA 296 (1977); Louis Samuel, 8 IBLA 268, 274 (1972).

There is no definitive list of factors which may qualify as a justifiable excuse. Each case must be considered by itself. For example, a death in the family has been held to be a justifiable excuse if it occurred at a time which would disrupt the timely payment of the rental. E.g., Billy Wright, 29 IBLA 81 (1977). Natural disasters may also provide a justifiable excuse if they are the proximate cause of the failure to pay timely. Kenneth F. Santor, 13 IBLA 208 (1973); Louis Samuel, supra at 274. We believe that the totality of the circumstances here, primarily the severe winter weather which prevented Appellant, a 69 year old widow, from mailing the payment earlier in January in [**4] order to have reached BLM timely, establishes a justifiable excuse for her failure to pay her rental timely. Accordingly, her oil and gas lease should be reinstated all else being regular. Rental for the 1978 lease year must be paid on or before February 1, 1978.

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 reversed and the case remanded for appropriate action consistent with this decision.

Joan B. Thompson
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joseph W. Goss
Administrative Judge

