

LLOYD M. AND ADELHEID A. PATTERSON

IBLA 78-99 Decided February 22, 1978

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, dated November 15, 1977, denying a petition of reinstate an oil and gas lease, which had terminated by operation of law for failure to pay the annual rental on time. W. 35995-C.

Affirmed.

1. Oil and Gas Leases: Reinstatement

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 considering the distance involved. Allowing 1 day for delivery demonstrates lack of reasonable diligence.

2. Accounts: Payments—Oil and Gas Leases: Reinstatement—Oil and Gas Leases: Rentals—Payments: Generally

Payment of the annual rental on an oil and gas lease is not made until a proper form of remittance is received by the appropriate office of the Bureau of Land Management.

3. Oil and Gas Leases: Reinstatement

Failure to make payment of the annual rental on time is justifiable when owing to factors ordinarily outside the lessee's control the reasonable diligence test cannot be met. Natural disasters or the physical condition of the lessee or members of the lessee's immediate family, will justify late payment where they are the proximate cause of

the late payment. Ignorance of the law, a pleasure or business trip, or disregard of regular mail collection schedules will not justify late payment.

APPEARANCES: Lloyd M. and Adelheid A. Patterson, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Lloyd M. and Adelheid A. Patterson appeal from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated November 15, 1977, denying their petition to reinstate an oil and gas lease, which had terminated by operation of law for failure to pay the advance annual rental on time. 1/ BLM did not receive the payment due November 1, 1977, until November 3, 1977. Under 43 CFR 3108.2-1(a) (1976), implementing 30 U.S.C. § 188(b) (1964), automatic termination occurs for leases on which there is no well capable of producing oil or gas in paying quantities if the lessee fails to pay the annual rental on or before the anniversary date of the lease.

In their petition filed November 11, 1977, appellants claim that they are entitled to reinstatement of the lease as provided by 43 CFR 3108.2-1(c), implementing 30 U.S.C. § 188(c) (1964), which permits reinstatement where failure to make payment was either justifiable or not due to lack of reasonable diligence on the part of the lessee. Although appellants admit—as the postmark on their letter confirms—that they did not deposit the rental payment with the Postal Service until October 31, 1977, they attempt to justify their failure to do so earlier.

Appellants allege that they returned home from a trip of undisclosed nature on Thursday, October 27 and placed several business letters including the rental payment in their mailbox to await pickup by the mail carrier. 2/ As of Saturday evening, the letters still lay in the mailbox; the mail carrier had not collected them, apparently because he had no deliveries for appellants. Early Monday morning, appellants, concerned over the missed pickup, deposited the letters at the nearest post office, where the envelope containing the rental payment was stamped "October 31, 1977" in their presence.

1/ The lease, which embraces the NE 1/4 sec. 28, T. 36 N., R. 83 W., 6th principal meridian, Natrona Co., Wyoming, originally issued to the late Byron W. Voorheis, Sr., effective November 1, 1972. Voorheis assigned the lease to appellants, effective December 1, 1972.

2/ Appellants' check bears the date October 30, 1977.

In its decision of November 15, 1977, BLM rejected appellants' proffered justification, stating, inter alia:

[A] lease payment contained in an envelope postmarked one day prior to the due date [is] not mailed sufficiently in advance to account for normal delays in postal handling * * *. The fact that you could have mailed the rental on October 27, 1977 and didn't constitute a justifiable delay, nor was reasonable diligence exercised in the mailing of the payment. Therefore, your petition for reinstatement is denied * * *.

Appellants elaborated on the extenuating nature of the circumstances in two documents filed on November 25, each serving as a notice of appeal and statement of reasons. ^{3/} All told, appellants rely on six factors to justify the lateness of their mailing. These are: (1) that appellants erroneously believed that mailing the payment postmarked prior to the due date satisfied the requirement of timeliness; (2) that appellants' payment was delayed by their absence from home; (3) that appellants are elderly; (4) that appellants are limited to a fixed income and are obliged to conserve their assets; (5) that appellants reside in hilly country which had been damaged by fire; and (6) that the lateness of the payment resulted from the unanticipated failure of the postman to collect the mail.

[1] We note initially that in the absence of extenuating circumstances mailing a rental payment 1 day before its due date does not constitute reasonable diligence. David R. and Darla L. Smith, 33 IBLA 63 (1977); Edward Malz, 33 IBLA 22 (1977); Adolph Muratori, 31 IBLA 39 (1977); Nevada Western Oil Co., 30 IBLA 379 (1977); Louis Samuel, 8 IBLA 268 (1972), aff'd Samuel v. Morton, Civ. No. CV-74-112-EC (August 12, 1974), aff'd Maisano v. Morton, Civ. No. 39720 (E.D. Mich., October 12, 1973). If appellants are to prevail here, they must, therefore, demonstrate justifiable delay, *i.e.*, that earlier mailing was prevented by factors ordinarily outside of an individual's control. Louis Samuel, supra, and cases cited, infra.

[2, 3] Appellants first assert that they believed they would comply with the law by mailing their rental payment postmarked prior to the due date. The regulations, however, state otherwise. David R. and Darla L. Smith, supra. 43 CFR 3108.2-1(a) requires the lessee "to pay" the rental on or before the due date. Subsequent language in that section provides that if the time for payment falls upon any

^{3/} One of the documents was originally filed in the Wyoming State Office, while this Board received the other. We forwarded the latter document to the Wyoming State Office, where it was received November 28, 1977.

day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. Such a saving clause would be unnecessary if mailing a remittance postmarked prior to the due date constituted payment. Clearly, the regulation contemplates receipt of the remittance. Cf. 43 CFR 3108.2-1(c)(2) (1976) states 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. In other words, the lessee must deliver payment to the Postal Service in time for the Postal Service to deliver payment to BLM. Again, payment in this context necessarily means receipt by BLM. Moreover, appellants may not avoid the effect of the regulation because they were ignorant of it. Ignorance of the regulations does not justify late payment. Apostolos Paliombeis, 30 IBLA 153 (1977); L. J. Arrieta, 26 IBLA 188 (1976); Charmaine Bowers, 16 IBLA 204 (1974); Louis Samuel, *supra*.

Neither does a second mitigating factor, appellants' absence from home, provide justification for the late payment. A trip, whether for business or pleasure, is not a circumstance ordinarily beyond an individual's control, and it does not ordinarily prevent a diligent individual from making payment or arranging for others to make payment in his absence. Hildred W. Bemthal, 30 IBLA 18 (1977); Sara Turcsan, 23 IBLA 370 (1976); Charles C. Sturdevant, 20 IBLA 280 (1975); Maurice E. Mosher, 14 IBLA 287 (1974).

Appellants' advanced age—Mr. Patterson is 80 and Mrs. Patterson is 72—also fails to justify late payment. There is no allegation that appellants are incapacitated, and, indeed, that they were able to travel and to make their abrupt journey to the post office negates any inference that they are. For a person's physical condition or the effect of a close family member's physical condition to excuse timely payment, it must be of such a debilitating nature that a person in such circumstances could not reasonably be expected to attend to his ordinary routine duties. Billy Wright, 29 IBLA 81 (1977); Milan de Lany, 22 IBLA 47 (1975); Mrs. Charles H. Blake, 20 IBLA 322 (1975); Pauline G. Thornton, 17 IBLA 251 (1974); Ada Lundgren, 17 IBLA 132 (1974); Wayne L. Williston, 13 IBLA 201 (1973).

Similarly, financial status does not excuse timely payment. Even if appellants had been absolutely unable to pay, the delay in payment would not have been justifiable. Peter T. Creamer, 22 IBLA 175 (1975); Faye A. Nicholas, 21 IBLA 69 (1975); Louis Samuel, *supra*. Although inability to pay is a circumstance beyond the lessee's control, it does not fall within the rationale of the reinstatement provision. This regulation rather preserves the rights of a lessee, who, although ready and willing to pay, is prevented by extraordinary circumstances from paying on time. The limited nature of the section's relief is apparent from the fact that a lessee must tender

payment within 20 days of the due date to fall within its provisions. Such a time limit suggests that the regulation is aimed at transient disabling occurrences rather than an underlying unreadiness or unwillingness to pay.

Appellants mention in passing that they live in a hilly area which had been heavily damaged by forest fires. They do not, however, explain how this fact is related to the lateness of their payment. Natural disaster may excuse the late payment, but the causal relationship between the disaster and the late payment must be shown. Genevieve C. Aabye, 33 IBLA 285 (1978); Kenneth F. Santor, 13 IBLA 208 (1973); Louis Samuel, supra.

Finally, appellants maintain that the lateness of the payment resulted from the unanticipated failure of the postman to collect the mail. Appellants admit, however, that mail pickup at their home was informal and irregular—that is to say, that if the mail carrier had no mail to deliver to appellants he might not drive by their home. We have held that reasonable diligence requires a lessee to keep abreast of official collection schedules and have encouraged them to rely on these schedules. Edward Malz, supra; Constitution Petroleum, Inc., 25 IBLA 319 (1976). We do not, therefore, consider appellants' reliance on the uncertainties of an unofficial pickup to manifest reasonable diligence or to justify their lateness.

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.

Joseph W. Goss
Administrative Judge

Edward W. Stuebing
Administrative Judge

