

ALBERT R. FAIRFIELD

IBLA 78-34      Decided March 8, 1978

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying reinstatement of oil and gas lease W-35602-B.

Affirmed.

1.      Oil and Gas Leases: Reinstatement—Oil and Gas Leases: Rentals

When rental payment for an oil and gas lease is mailed after the date it is due, there can be no basis for reinstating the lease because of reasonable diligence.

2.      Oil and Gas Leases: Reinstatement—Oil and Gas Leases: Rentals

A lessee's failure to make timely payment of annual rental on an oil and gas lease is not justified because it results from his misplacing the courtesy notice that rental is due.

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

Where a lessee presents no evidence that illnesses of his family members were so disruptive as to prevent him from carrying on his employment and other routine activities as usual, the late payment of rental on an oil and gas lease is not justified by these illnesses.

APPEARANCES: Edwin A. Getscher, Esq., Hamburg, Iowa, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Albert R. Fairfield (appellant) appeals from the September 16, 1977, decision of the Wyoming State Office, Bureau of Land Management

(BLM), denying his request that oil and gas lease W-35602-B be reinstated. We affirm.

Appellant's annual rental on the lease was due on or before September 1, 1977. Appellant's payment, a check for \$240, the amount due, was sent to BLM by letter postmarked September 2, 1977: Owing to this failure to pay annual rental timely, appellant's oil and gas lease terminated automatically by operation of law, and BLM so advised him on September 8, 1977.

On September 14, 1977, appellant filed with BLM a request for reinstatement of this lease, stating that, although he was aware of the due date for payment of rental, he had misplaced "the statement," that is, BLM's courtesy notice that rental was due. On September 16, 1977, BLM issued its decision denying reinstatement, and this appeal followed.

In his statement of reasons, appellant states that in July through September 1977 his wife and son were very ill, and that, owing to the added pressures on him due to these illnesses, "the billing got lost" and he could not find time to search for it properly.

The law, 30 U.S.C. § 188(c), provides that a lease which has terminated by operation of law may be reinstated if the lessee shows to the satisfaction of the Secretary that his failure to pay the rental on time was either justifiable or not due to a lack of reasonable diligence on his part.

[1] Under 43 CFR 3108.2-1(c)(2), "reasonable diligence" is defined as follows: "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" (Emphasis supplied). When rental payment is mailed no earlier than the date it was due, there can be no basis for reinstating an oil and gas lease because of reasonable diligence. Dolores M. Heggie, 28 IBLA 272 (1976). Since appellant did not mail rental payment until September 2, 1977, the day after it was due, we must conclude that his failure to make timely payment was due to a lack of reasonable diligence.

[2] It remains yet to determine whether appellant may justify his failure to make timely payment. Appellant asserted in his original request for reinstatement to BLM that this failure resulted from his having misplaced the courtesy notice: "I was aware of the due date on this lease but had misplaced the statement. I have never been late before and would not have been this time had I not misplaced the statement." A lessee's failure to make timely payment of annual rental is not justifiable because it results from his misplacing the courtesy notice that rental is due. Mary A. Christopher,

19 IBLA 53 (1975); William L. McCullough, 18 IBLA 97 (1974); Louis J. Patla, 10 IBLA 127 (1973).

[3] On appeal, appellant asserts for the first time that the illnesses of his wife and son contributed to his failure to make timely payment. <sup>1/</sup> However, appellant admits that these illnesses did not prevent him from going to work as usual. Where illness is not so severe as to prevent a lessee from attending to other business, it does not justify the late payment of rental. Milan de Lany, 22 IBLA 47 (1975). Appellant presents no evidence that these illnesses were so disruptive as to prevent him from carrying on as usual other routine activities of his home life, or that they otherwise caused him to be unable to pay the rental timely. In the absence of evidence establishing a direct causal connection between the illnesses of a lessor's family member and the late payment of rental, the late payment is not justified. William L. McCullough, supra.

Moreover, appellant does not maintain that these illnesses made it impossible for him to make the payment, but argues only that because of them he was unable to search for BLM's courtesy notice. Thus, appellant admits, as he did in his original request to BLM, that the true cause of his failure to make payment was his misplacing this notice which, as discussed above, does not constitute justification for this failure, particularly where, as here, the lessee admittedly knew of the deadline for payment.

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.

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Edward W. Stuebing  
Administrative Law Judge

I concur.

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Martin Ritvo  
Administrative Judge

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<sup>1/</sup> Appellant does not specify the nature of these illnesses, stating only that his wife "was very ill" and "is extremely nervous, tires very easily and has severe pain in her legs and stomach all of the time," and that his son "has been ill \* \* \* and faces the prospect of surgery."

ADMINISTRATIVE JUDGE GOSS DISSENTING:

Appellant states under oath that during July, August, and September 1977, he has had to care for his ill wife and son, and drive 70 miles round trip per day to work, 6 and 7 days per week. Appellant misplaced the papers relating to the payment, but posted his payment 1 day after it should have been received. I would hold his failure to make timely payment to be justifiable, one purpose of the statute being to give relief in such unfortunate circumstances. See R. G. Price, 8 IBLA 290 (1972).

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Joseph W. Goss  
Administrative Judge

