

C. H. WINTERS

IBLA 78-144

Decided April 26, 1978

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease W-56196.

Reversed and remanded.

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. Where the lessee has gone on a trip intending to return by mid-month but is delayed by the necessity of caring for an old and ill friend whom he visited, so that he does not return until the first of the next month, the anniversary date of the lease, his failure to pay the rental timely is justifiable and the lease is to be reinstated.

APPEARANCES: C. H. Winters, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

C. H. Winters has appealed from a decision dated December 6, 1977, of the Wyoming State Office, Bureau of Land Management (BLM), denying his petition for reinstatement of his oil and gas lease which had terminated automatically by operation of law for failure to pay rental on or before the anniversary date, November 1, 1977. Appellant mailed the rental payment on November 1, 1977, from Tupalo, Mississippi. It arrived in the State Office on November 10, 1977.

In his petition for reinstatement appellant says that he left on a business trip on October 19, intending to stay away only 2 or 3 days

intending to return so that he could pay the rental on October 15, that day being his bill paying day. As part of this trip, he continues, in Chicago he visited an old acquaintance, who had been sick and suffered business reversals and needed help. As a result, he states, he was detained and did not return home until November 1. Thereupon he promptly sent a check for the rental, air mail-special delivery.

[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).

Mailing rental on the due date does not constitute reasonable diligence. Lloyd M. Patterson, 34 IBLA 68 (1978).

The remaining question is whether there is any "justifiable" excuse for the delay. As appellant acknowledges, he knew before he left on his trip that the rental was due in the first of the month, but he expected to be home by the middle of the previous month. He says that, since he lives alone, he had no one to pay the rental in his absence.

In a recent decision reinstatement was granted where the lessee who lived alone had been prevented from mailing rental earlier than the end of the month because she had visited her daughter earlier in that month and had returned home to severe winter weather. Genevieve C. Aabye, 33 IBLA 285 (1978). The decision stated:

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 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.

Similarly, we deem the circumstances here to justify the delay in payment. Payment was mailed on the anniversary date, there is no hint of any attempt to take advantage of the delay, and appellant's postponement of his return home to play the Good Samaritan to an ailing friend was the proximate cause of his default, and constitutes an acceptable reason for his failure to pay the rental timely. Rental for the 1978 lease year must be paid within 15 days of the receipt of this decision.

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 is remanded for action consistent herewith.

Martin Ritvo
Administrative Judge

I concur:

Frederick Fishman
Administrative Judge

ADMINISTRATIVE JUDGE STUEBING DISSENTING:

In my opinion appellant has not shown sufficient justification for his failure to pay his lease rental when due.

In his petition for re-instatement to the Wyoming State Office he alleges only the following reason: "One of my contacts, on my trip, was an old acquaintance, in Chicago. He had been sick and with business reversals, needed some help. I felt I could not refuse to help and as the result I was detained. Did not return to my home until November 1st."

No additional details were furnished, either to the State Office, or to this Board on appeal. I do not find his explanation very enlightening. He states his friend "had been sick." Thus, it is unclear whether his friend was ill during appellant's visit or if a past illness is only mentioned as the cause of his friend's business reversals. The severity of the illness is not mentioned—was it a cold or a coronary? What assistance did appellant provide, and how much time did that require?

I am not being deliberately callous or unsympathetic. In 1954 the Congress enacted a statute by which any Federal oil and gas lease would terminate automatically by operation of law if the full amount of the rental was not paid when due. 68 Stat. 585. No provision was made for reinstatement in that legislation. In the years following a number of bills were introduced to grant this Department the authority to reinstate leases so terminated when the circumstances warranted, but these bills failed to pass. Members of Congress expressed concern that such authority might be abused or injudiciously administered. Finally, some 16 years later, Congress did enact the statute enabling the Secretary to reinstate such terminated leases where "it is shown to the satisfaction of the Secretary of the Interior that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee * * *." 84 Stat. 206.

Therefore, appellant must show to our satisfaction that he was justified in not paying timely. That is his obligation under the law. It is the responsibility of this Board, as the Secretary's delegate to consider such matters and decide them, to order reinstatement only in those instances where appellant's showing of the facts and circumstances is clearly convincing.

Appellant's ambiguous and uninformative declaration does not meet this test. It says only that he took some time along the way to be of assistance to a friend. We are told nothing of the nature of the assistance or the time required. We are told nothing to indicate the seriousness of the circumstances. Was there an emergency? How compelling was the need? Was his friend destitute or

dangerously ill? The friend was a business contact. Did appellant further his business interests in Chicago by neglecting his obligation under the lease? I do not know, and the reason I do not know is because appellant has not told us. Therefore, I must consider that he has failed his obligation to show to my satisfaction that he was justified in paying his rental late.

If we are to embark on a course of reinstating leases in cases where the appellant makes a statement which is sufficient only to evoke a sympathetic response, the purpose and function of the 1954 legislation will indeed be frustrated.

Edward W. Stuebing
Administrative Judge

