

EMMA PACE

IBLA 78-147

Decided May 22, 1978

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease W-45328-E.

Affirmed.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease, terminated automatically by operation of law for failure to pay rental timely, may be reinstated if, among other things, the failure to pay timely was justifiable or not due to a lack of reasonable diligence on the part of the lessee. Mailing the rental payment after the due date does not constitute reasonable diligence. An automobile accident occurring 25 days before the rental was due is not a justifiable reason for reinstating the lease where it is not shown that its occurrence prevented the lessee from making timely payment. Reliance on receipt of a courtesy notice does not justify failure to pay rental timely.

APPEARANCES: Emma Pace, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Emma Pace appeals from the December 6, 1977, decision of the Wyoming State Office, Bureau of Land Management (BLM), denying her petition for reinstatement of oil and gas lease W-45328-E. The oil and gas lease terminated automatically by operation of law when appellant failed to pay the annual rental on or before the anniversary date, November 1, 1977. The rental payment was postmarked November 4, 1977, and arrived at the State Office on November 8.

In her statement of reasons, appellant argues that she has substantially complied with the rental payment requirements. In her statement and in her petition for reinstatement, appellant explains that she was in an automobile accident on October 7, 1977. Although not physically injured, she was "badly shaken and extremely upset." Because she lived alone, she decided to move in with a friend to obtain proper rest. Another friend retrieved appellant's mail, throwing out any junk mail. Appellant suggests this might have been the reason why she did not receive the BLM courtesy notice that rental was due. Appellant states she did not pay the rental until the person who assigned her the lease reminded her on November 4 of the payment due on November 1.

[1] When rental for an oil and gas lease is not paid on or before the anniversary date, the lease automatically terminates by operation of law, except under limited circumstances not applicable here. 30 U.S.C. § 188(b) (1970). Congress allows reinstatement of a terminated lease if, among other things, the failure to pay the rental timely "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." 30 U.S.C. § 188(c) (1970). Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal and delivery of the payment. 43 CFR 3108.2-2(c)(2). In order for the failure to pay rental timely to be justifiable, the failure must be caused by factors outside the lessee's control, which were the proximate cause of the failure. Richard C. Corbyn, 32 IBLA 296 (1977); Adolph F. Muratori, 31 IBLA 39 (1977).

The rental payment was due at the BLM State Office on November 1, 1977, a Tuesday. Appellant did not mail the rental payment until November 4. Mailing a rental payment after it is due does not constitute reasonable diligence. Albert R. Fairfield, 34 IBLA 132 (1978).

Appellant also has not established that her failure to pay the rental timely was justifiable. She has not shown that the automobile accident prevented her from making a timely payment. The accident and events occurring thereafter lack both proximity to the anniversary date and causality of the failure to pay. See Kenneth F. Santor, 13 IBLA 208 (1973), aff'd, 383 F. Supp. 1265 (D. Wyo. 1974).

Appellant argues that she did not receive the BLM courtesy notice, possibly because her friend inadvertently threw it out with the junk mail. However, the courtesy notice is merely a reminder that rental is due. Reliance on receipt of the notice does not justify a failure to pay the rental timely. Richard C. Corbyn, supra; Helena Silver Mines, Inc., 30 IBLA 262 (1977). We must conclude that the BLM State Office properly denied appellant's petition for

reinstatement and that her oil and gas lease terminated automatically by operation of law on November 1, 1977.

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.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Frederick Fishman
Administrative Judge

