

DON C. WILEY

IBLA 78-170

Decided June 2, 1978

Appeal from decision of the New Mexico State Office, Bureau of Land Management, denying reinstatement of oil and gas leases NM-9303 and NM-9316.

Affirmed as modified.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals --
Oil and Gas Leases: Termination

An oil and gas lease terminates automatically by operation of law for failure to pay rental timely when the rental check, although timely received by the appropriate BLM office, is not honored by the bank on which it is drawn. However, if a lessee provides adequate evidence, such as an admission by a bank official, that the bank erroneously dishonored the check, the error of the bank may not vitiate the otherwise proper payment of rental to BLM.

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

An oil and gas lease terminated for nonpayment of rent may be reinstated under 30 U.S.C. § 188(c) (1970) if the failure to pay was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. Where a lessee files his rental check timely, but the check is non-negotiable because insufficient funds are on deposit in the particular bank, the lessee has not exercised reasonable diligence. Failure to pay rental timely may be

justifiable where it is caused by factors outside the lessee's control which were the proximate cause of the failure. Where the lessee provides no evidence or circumstances of an alleged unaccountable delay in the electronic transfer of funds from one bank to another which resulted in the lessee's rental check being dishonored, there is no basis for reinstatement of the lease.

APPEARANCES: Malcolm G. Colberg, Esq., of Albuquerque, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Don C. Wiley appeals from the December 5, 1977, decision of the New Mexico State Office, Bureau of Land Management (BLM), denying reinstatement of oil and gas leases NM-9303 and NM-9316 because of failure to show compliance with regulations permitting reinstatement of a terminated lease. Both leases had terminated by operation of law under 30 U.S.C. § 188(b) (1970) for failure to pay rental on or before the anniversary date, May 2, 1977. Appellant had timely submitted a check for both rentals, drawn on the Town & Country Bank of Houston, Texas. However, the check was returned to the State Office marked "Insufficient Funds."

Prior to receiving a notice of termination from the State Office, appellant filed a letter from the Town & Country Bank together with a cashier's check for the rentals. The letter stated:

Town & Country Bank received it [the original rental check] for payment on May 6, 1977. West East Gas Company [whose account the check was written on] was under the assumption that funds had been sent electronically from Valley View National Bank, Dallas, Texas, but due to a delay, the check was returned.

In his statement of reasons, appellant relies on our decision in Hugh Burnett, 28 IBLA 303 (1977), for the proposition that the Board has ordered terminated oil and gas leases reinstated where a bank erroneously dishonors a check. Appellant argues that he should not be penalized for some "unaccountable delay" in the electronic transfer of funds.

[1] An oil and gas lease terminates automatically by operation of law for failure to pay rental timely when the rental check, although timely received by the appropriate BLM office, is not honored by the bank on which it is drawn. Duncan Miller, 16 IBLA 379 (1974). However, if a lessee provides evidence, such as an admission by a bank official,

that the bank erroneously dishonored the check, it has been held that the error of the bank may not vitiate the otherwise proper payment of rental to BLM. Pauline V. Trigg, 31 IBLA 296 (1977); Gretchen Capital, Ltd., 29 IBLA 247 (1977); WIKOA, Inc., 22 IBLA 6 (1975). 43 CFR 1822.1-2(a). In these cases, the lessees' banks either admitted that they erroneously dishonored the check or stated that they had an agreement with the lessee regarding overdrawn checks which was not followed. For example, in the case cited by appellant, we directed BLM to accept an offeror's dishonored check where the bank admitted erroneously crediting a deposit by the offeror to the wrong account. Hugh Burnett, *supra*.

Appellant has submitted the above-quoted letter from the Town & Country Bank that the check was dishonored because of a delay in the electronic transfer of funds from another bank. The Town & Country Bank does not suggest that it erroneously dishonored the check. Based on the information before us, we can only assume that at the time appellant's check was presented for payment, the transfer had not been completed and appellant's account had insufficient funds to cover the check. Therefore, the bank did not erroneously dishonor the check. In such circumstances, appellant's lease must be considered to have terminated for nonpayment of rent. Duncan Miller, *supra*.

[2] An oil and gas lease terminated for nonpayment of rent may be reinstated under 30 U.S.C. § 188(c) (1970) if it is shown to the satisfaction of the Secretary of the Interior that 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. The mere fact a check was sent to the BLM office prior to the anniversary date of the lease does not demonstrate reasonable diligence if that check was not then negotiable. *Cf.* James S. Guleke, 9 IBLA 73 (1973).

The question becomes whether the reason given by appellant for the non-negotiability of the check constitutes a justifiable excuse.

Failure to pay rental timely may be justifiable when it was caused by factors outside the lessee's control which were the proximate cause of the failure. Leonard A. J. Tancredi, 32 IBLA 325 (1977). Although appellant has labeled the delay in transfer as "unaccountable," he has provided no evidence to support this allegation. Moreover, appellant has not described any circumstances of the transfer which made it outside his control and the proximate cause of the failure to pay rental timely. Again, appellant has not shown any basis for reinstatement of his oil and gas lease. Leonard A. J. Tancredi, *supra*.

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 for the above-stated reasons and is accordingly modified to that extent.

Joan B. Thompson
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Joseph W. Goss
Administrative Judge

