

HARPEL PETROLEUM CORP.

IBLA 78-153

Decided June 27, 1978

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease W-15605.

Affirmed as modified.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease which has terminated automatically by operation of law for failure to pay rental timely can be reinstated only if, among other things, the failure to pay timely was not due to a lack of reasonable diligence or was justifiable.

2. Oil and Gas Leases: Reinstatement

In most cases, the date of the postmark on the envelope containing an oil and gas lease rental payment is deemed the date the payment was mailed. A contention that the payment was deposited in the mail prior to the postmark date must be supported by satisfactory evidence in order to rebut this inference from the postmark date.

APPEARANCES: John P. Harpel, Jr., for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Harpel Petroleum Corporation appeals from the December 6, 1977, decision of the Wyoming State Office, Bureau of Land Management (BLM), holding that oil and gas lease W-15605 terminated automatically by

operation of law for failure to pay rental on or before the anniversary date, November 1, 1977. The State Office refused to consider appellant's petition for reinstatement because it was not filed within 15 days of receipt of the termination notice as required by 43 CFR 3108.2-1(a).

Appellant's rental payment was postmarked November 4, 1977, although the check was dated October 27, 1977. The BLM State Office received the payment on November 7. On November 8, the State Office sent appellant an "Oil and Gas Lease Termination Notice" which informed appellant, among other things, that its lease terminated as of the anniversary date because of the late payment and that a petition for reinstatement must be filed within 15 days of receipt of the notice. The return receipt card shows that appellant received the notice on November 10. Therefore, the petition for reinstatement was due at the State Office by November 25. However, appellant's petition was dated November 25, postmarked November 29, and received by the State Office on November 30.

In its petition and statement of reasons, appellant states that the rental check was written and mailed on October 27. It blames the late arrival on the postal service. As evidence, it submits copies of checks dated October 27 which are numbered before and after the rental check. Appellant acknowledges that its petition for reinstatement was not filed timely.

[1] An oil and gas lease which has terminated automatically by operation of law for failure to pay rental timely can be reinstated only if, among other things, the failure to pay timely was not due to a lack of reasonable diligence or was justifiable. 30 U.S.C. § 188(c) (1970). Reasonable diligence normally requires sending the rental payment "sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment." 43 CFR 3108.2-1(c)(2); David R. Smith, 33 IBLA 63 (1977).

[2] Generally, the date of the postmark on the envelope containing an oil and gas lease rental payment is deemed the date payment was mailed. David R. Smith, *supra*. A contention that the payment was deposited in the mail prior to the postmark date must be supported by satisfactory evidence in order to rebut this inference from the postmark. Edward Malz, 33 IBLA 22 (1977); Richard L. Triplett, 32 IBLA 369 (1977); Agnes M. French, 28 IBLA 282 (1976). If, as here, the lessee is relying on his business practices to prove an earlier deposit, he must provide sufficient credible evidence to establish the likelihood of abnormal delay and erroneous postmarking by the U.S. Postal Service. Elliott Davis, 26 IBLA 91 (1976).

Appellant's evidence consists of copies of its canceled checks dated October 27, 1977, as follows: No. 3193 to City Center Parking, first negotiated on November 9, 1977; No. 3194 marked void; No. 3195

to BLM, first negotiated on November 10, 1977; and No. 3196 to Hank Seale Oil Directories, first negotiated on November 17, 1977. Appellant has submitted no evidence suggesting when these checks were deposited in the mail. In Elliott Davis, supra, the appellant submitted a similar series of canceled checks. However, all those checks except the rental payment were negotiated within a few days of the alleged deposit in the mail, thus suggesting they were mailed when executed. Moreover, this was only one element of the evidence submitted by Davis to rebut the postmark date on the rental payment. The Board found that Davis exercised reasonable diligence based upon all the evidence. Here, appellant's evidence gives no indication when the BLM rental check was deposited in the mail. Appellant has not rebutted the inference that the postmark date is the date the rental check was deposited in the mail. Since the postmark date is after the anniversary date, appellant did not exercise reasonable diligence. Iola D. Long, 32 IBLA 333 (1977).

Because appellant has failed to show that it exercised reasonable diligence, and because the appellant has not alleged any justifiable reason for failing to pay the rental timely, the oil and gas lease cannot be reinstated. In view of this, we need not discuss the effect of 43 CFR 1821.2-2(g) on a petition for reinstatement of an oil and gas lease which is not filed within 15 days of receipt of the termination notice as required by 43 CFR 3108.2-1(c). See Don Kelland Materials, Inc., 35 IBLA 133 (1978).

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 as modified.

Joan B. Thompson
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Frederick Fishman
Administrative Judge

