

J. R. OIL CORP.

IBLA 78-241

Decided July 12, 1978

Appeal from the decision of the California State Office, Bureau of Land Management, denying a petition to reinstate oil and gas lease CA 145, which had terminated for failure to pay rental timely.

Affirmed.

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

An oil and gas lease which has terminated for failure to pay rental timely may be reinstated upon a satisfactory showing that, among other things, the failure to pay the rental on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. Generally, mailing the payment the day before it is due does not constitute reasonable diligence. A prolonged business trip will generally not constitute a justifiable excuse for the late payment.

APPEARANCES: James W. Dibrell, President, for J. R. Oil Corp.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

J. R. Oil Corp. appeals from the decision of the California State Office, Bureau of Land Management (BLM), dated January 15, 1978, which refused to reinstate its oil and gas lease CA 145. This lease embraced the SW 1/4, sec. 12, T. 28 S., R. 27 E., Mount Diablo Meridian.

The lease rental payment was due on the anniversary date, September 1, 1977, a Thursday. Appellant's payment was mailed August 31, 1977, in Bakersfield, California, and received in the BLM office in Sacramento, California, on September 2, 1977. The

subject lease terminated automatically by operation of law for failure to pay the advance rental on or before the anniversary date, according to the terms of 30 U.S.C. § 188(b) (1970) and its implementing regulation, 43 CFR 3108.2-1(a).

[1] An oil and gas lease which has terminated for failure to pay rental timely may be reinstated pursuant to 30 U.S.C. § 188(c) (1970) upon a satisfactory showing that, among other things, the lessee's failure to pay the rental on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. 43 CFR 3108.2-1(c); Louis Samuel, 8 IBLA 268 (1972), appeal dismissed, Samuel v. Morton, Civ. No. CV-74-1112-EC (C.D. Calif. Aug. 26, 1974); Gordon Epperson, 16 IBLA 60 (1974).

Mr. James Dibrell, President of J. R. Oil Corp., asserts that, based on his experience, a letter mailed in Bakersfield can reasonably be expected to arrive in Sacramento the following day. He indicates that he has been advised by Postal Service employees that overnight service between the two cities is customary. He also claims that because the distance between the two cities is relatively short, case precedent involving longer distances is not directly applicable to this situation. In addition, he notes that an unexpectedly prolonged business trip prevented him from mailing the rental check earlier.

Reasonable diligence normally requires sending the rental payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmission, and delivery of mail. 43 CFR 3108.2-1(c)(2). Generally, mailing a rental payment the day before it is due does not take into account normal delays in the transmission of mail, W. E. Hester, 18 IBLA 420 (1975), and thus does not constitute reasonable diligence. Lloyd M. Patterson, 34 IBLA 68 (1978); Nevada Western Oil Company, 30 IBLA 379 (1977) (also an intrastate mailing); Sara Turcsan, 23 IBLA 370 (1976); Gordon Epperson, supra. Although overnight service between Bakersfield and Sacramento may be customary, there is no showing that reliance on such a practice takes normal delays into account. Without additional showings, such as information on the time of day the payment was mailed and corroboration by the Post Office that delivery the next day could be expected, and what normal delays would entail, this Board cannot find reasonable diligence here. A. Helander, 25 IBLA 54 (1976). Appellant has not provided any such showings.

Furthermore, we cannot find a justifiable excuse for the delay. Voluntary absence from a lessee's business office is not a justifiable excuse for late payment. Helena Silver Mines, Inc., 30 IBLA 262 (1977); W. E. Hester, supra. Failure to pay the rental by the anniversary date is justifiable only in situations where factors

outside the lessee's control were the proximate cause of the failure. Louis Samuel, *supra*. There has been no such showing here. The rental could have been paid before appellant's trip or other arrangements could have been made. Maurice E. Mosher, 14 IBLA 287 (1974). Without more, we cannot find the prolonged business trip to be a justifiable excuse.

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:

Frederick Fishman  
Administrative Judge

Douglas E. Henriques  
Administrative Judge

