

HUBERT W. SCUDDER
EILEEN SCUDDER

IBLA 78-385

Decided August 3, 1978

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease W-48614.

Affirmed.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease terminated by operation of law for failure of the lessee to pay the annual rental on or before the anniversary date of lease may be reinstated only if the late payment is justifiable or not due to a lack of reasonable diligence. Where the death of a lessee's father occurs on February 28, the rent is mailed no earlier than February 28, and the rent is due and payable on March 1, the requisite proximity and causality to justify the delay in payment is not demonstrated.

APPEARANCES: Christopher Kirchner, Esq., Kirchner & Bass, Orange, California, for appellants.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is taken from a March 21, 1978, decision of the Wyoming State Office, Bureau of Land Management (BLM), denying Mr. and Mrs. Hubert W. Scudder's petition for reinstatement of oil and gas lease W-48614. The lease had terminated by operation of law when appellants failed to remit the annual advance rental payment on or before its due date of March 1, 1978, a Wednesday. BLM did not receive payment until March 6, 1978, the following Monday. Under 43 CFR 3108.2-1(a), implementing 30 U.S.C. § 188(b) (1976), automatic termination occurs for leases on which there is no well capable of producing oil and gas in paying quantities if the rental payment is not received on or before the anniversary date of the lease.

In the petition for reinstatement, Eileen Scudder explained the reasons for late payment as follows:

I wrote this check on the 25th of February, my father passed away, in England, February 28th, but before I went to the funeral, I remembered the lease check, this was on the 28th, I rushed to the Fountain Valley Post Office, approximately 5:30 P.M. as I thought this would be faster than a local post box, to my dismay, when I arrived home I found your Notice of Loss of Lease. I then checked with the aforesaid Post Office and was told "this mail is picked up and then taken to Santa Ana" but they assured me that it would have to bear the stamp of the day, they said if it did not bear the stamp of the 28 it would have to bear the stamp of the 1st, but it would almost have to have the 28th postmark.

Appellants' check was dated February 25, 1978, mailed on February 28, and the envelope was postmarked P.M. 1 March 1978, Santa Ana, CA. BLM denied appellants' petition on the ground that they had failed to exercise reasonable diligence in mailing it.

Appellants' counsel contends in the statement of reasons that the delay in mailing was justifiable because it was proximately caused by the illness and death of a family member occurring contemporaneously just before the anniversary date of the lease. He asserts that during February the health of Mrs. Scudder's father declined rapidly; he was hospitalized in England, and during this time Mrs. Scudder was obliged to manage family affairs from California.

[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). In defining "justifiable" the Board has stated:

It seems reasonably clear that Congress by the word "justifiable" was adverting to a limited number of cases where, owing to factors ordinarily outside of the individual's control, the reasonable diligence test could not be met. This is thus a subjective test, dependent upon the factual milieu of the individual. We believe that cases which are so covered are those

where the death or illness of the lessee or member of his close family, occurring [sic] with immediate proximity to the anniversary date, have been a causative factor in his failure to exercise reasonable diligence.

Louis Samuel, 8 IBLA 268, 274 (1972), appeal dismissed, Civ. No. CV-74-1112-EC (C.D. Calif. 1975); Fredres E. Laubaugh, 24 IBLA 306 (1976). See also Kenneth F. Santor, 13 IBLA 208, 210 (1973), aff'd, Santor v. Morton, 383 F. Supp. 1265 (D. Wyo. 1974).

The factual milieu of this case does not fall within the range of circumstances deemed justifiable within the meaning of the reinstatement provisions in 30 U.S.C. § 188(c)(1976). The death of Mrs. Scudder's father on February 28, the mailing of the rent on that date, which rent was due and payable the following day, i.e., March 1, did not demonstrate due diligence or justify the delay in payment. Cf. Billy Wright, 29 IBLA 81 (1977). No acceptable explanation has been tendered for the delay in mailing from February 25 to February 28, as claimed by appellants.

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.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge

