

JOHN D. HOLT

IBLA 78-352

Decided August 15, 1978

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease, W 58045.

Reversed and remanded.

1. Oil and Gas Leases: Reinstatement

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment considering the distance involved. Where a letter is mailed on February 25 from Windom, Minnesota, to Cheyenne, Wyoming, where it is due on March 1, reasonable diligence has been exercised.

APPEARANCES: David D. Yaffe, Esq., Duncan, Allen and Mitchell, Washington, D.C., for Appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

John D. Holt appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated March 15, 1978, denying his petition to reinstate noncompetitive oil and gas lease W 58045. The lease had terminated by operation of law when the annual advance rental payment was not received on or before its due date of March 1, 1978, a Wednesday. BLM did not receive payment until March 2, a Thursday. Under 43 CFR 3108.2-1(a), implementing 30 U.S.C. § 188(b), 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 his petition for reinstatement, appellant explained the reasons for late payment as follows:

I mailed the rental payment to your office on February 26, 1978 by first class mail from the Slayton, Minnesota Post Office. I feel that my payment was "timely" although - I must admit - I do not know what the Federal Laws and Regulations provide in that regard. . . . I spent the week of February 19 - 25 in St. Petersburg, Florida visiting my brother. I had intended to take the notice along and send the payment to you about February 22. However, through an oversight, I left the payment notice behind. I returned to Slayton the evening of February 25 and mailed my payment to you the next day.

Even though appellant there stated that he mailed the rental payment on February 26, ^{1/} his check was dated February 25, and the envelope in which he mailed it was postmarked Windom, Minnesota, February 25, 1 p.m., 1978.

BLM denied appellant's petition on the ground that he had not shown justifiable reasons for late payment.

Attached to appellant's statement of reasons is a letter from the postmaster at Windom, Minnesota. The postmaster states therein that a letter mailed from Windom should take 2 days to reach Cheyenne, Wyoming, that February 25 was a Saturday, and that a letter postmarked on that day should have arrived in Cheyenne on Tuesday, February 28, 1978. Appellant contends, citing Edward Malz, 33 IBLA 22 (1977); R. G. Price, 8 IBLA 290 (1972), inter alia, that under the facts of the case at bar, BLM erred in denying the petition to reinstate his lease. Appellant further asserts that he failed to receive proper notice as to when payment was due in the BLM office.

[1] The question for decision is whether appellant in mailing his rental check on February 25, 1978, displayed reasonable diligence, as defined by 43 CFR 3108.2-2(c)(2): "Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment." Allowing 3 or 5 days for delivery will generally be sufficient. Edward Malz, supra; Eason Oil Company, 16 IBLA 109 (1974); R. G. Price, supra. The interval between February 25 and March 1, falls within

^{1/} In his statement of reasons for appeal, appellant asserts that the payment was mailed on February 25, 1978.

the ambit of reasonable diligence and appellant's lease should therefore be reinstated. 2/

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 reversed and remanded.

Frederick Fishman
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Edward W. Stuebing
Administrative Judge

2/ In view of our conclusion herein we need not address the other contention in appellant's statement of reasons.

