

DANIEL ASHLEY JENKS

IBLA 78-368

Decided August 17, 1978

Appeal from decision of the Utah State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas leases U-34983 and U-34984.

Affirmed.

1. Oil and Gas Leases: Reinstatement

The postmark date on a letter bearing payments of annual rental on oil and gas leases will be deemed to be the date of mailing in the absence of satisfactory evidence corroborating the lessee's assertion that the payments were mailed before the postmark date.

2. Oil and Gas Leases: Reinstatement

Mailing payments of annual rental on oil and gas leases on Sunday in New York City 3 days before they are due in Salt Lake City, Utah, does not constitute a reasonably diligent attempt to pay the rental in a timely manner, in the absence of a clear showing that the payor had good cause to believe that the letter would be collected from the mailbox that same day.

APPEARANCES: Daniel Ashley Jenks, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Daniel Ashley Jenks appeals from the March 4, 1978, decision of the Utah State Office, Bureau of Land Management (BLM), denying his petition for reinstatement of oil and gas leases U-34983 and U-34984. We affirm.

Jenks' annual rental on these leases was due on or before February 1, 1978, their anniversary date, a Wednesday. However, his rental payments did not arrive at BLM until February 2, 1978, a Thursday. Owing to this failure to pay annual rental timely, Jenks' leases terminated automatically by operation of law on February 1, 1978, and BLM so advised him on February 7, 1978.

On February 21, 1978, Jenks filed a timely petition for reinstatement of these leases, along with new checks for annual rental. In this petition, Jenks alleged that the rental checks were duly deposited in the mail in New York, New York, on January 29, 1978, a Sunday, but that, "Due to snow storms over the previous several days, the mail systems of the New York airports had become blocked," resulting in the payments' late arrival at BLM. 1/

On March 14, 1978, BLM issued its decision denying the petition for reinstatement. BLM concluded that it was likely that the checks were mailed on January 30, 1978, a Monday, as they were dated as of January 30 and as the envelope in which they were mailed was postmarked on that date. BLM held that the payments were not mailed sufficiently in advance of the anniversary date to account for the normal delays in the collection, transmittal, and delivery of payment, as required by the regulations, and that Jenks had not exercised reasonable diligence in mailing the payments only 2 days before the anniversary date of the leases. Jenks filed a notice of appeal of this decision.

[1] Any noncompetitive oil and gas lease on which there is no well capable of producing oil or gas in paying quantities terminates automatically by operation of law if annual rental is not paid on or before the anniversary date. 30 U.S.C. § 188(b) (1970). Congress has determined that such a terminated lease may be reinstated only if, *inter alia*, the lessee shows that his failure to pay rental timely was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1970). Appellant has not alleged that any event outside his control caused his failure to pay the rental timely, so there is no question as to whether this failure was justifiable. 2/ Therefore, in order to obtain reinstatement of

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1/ However, in his statement of reasons for appeal, Jenks is far less declarative concerning the weather as an impediment to the movement of mail, saying only:

"Appellant does not know why the checks arrived late. It could be because of the severe snowstorms which plagued the Northeastern United States during the period. If so, this certainly would not constitute a 'normal' delay or circumstance under the regulations."

2/ Appellant alludes to the severity of the winter weather at the end of January, but has not alleged that he was prevented by it from being able to mail his rental. To the contrary, it appears from

these leases, he must show that the late payment occurred despite reasonable diligence on his part to pay the rentals in a timely manner.

The dispositive issue in this dispute is when appellant mailed the rental payments. He asserts that he mailed them on Sunday, January 29, 1978. However, the envelope in which appellant mailed these payments bears the following postmark: "NEW YORK, NY 10017 PM 30 JANUARY 1978." BLM concluded that appellant mailed the payments on January 30, 1978. The resolution of this issue is critical to the case, as a lessee who mails a payment from New York City to Salt Lake City within 3 days of its due date (here, on January 29), is reasonably diligent (see George C. Ott, 30 IBLA 146 (1977); Eason Oil Company, 16 IBLA 109 (1974)), while one who waits until just 2 days prior to the due date (here, on January 30), is not. See Rosemary Weaver, 30 IBLA 227 (1977); L. J. Arietta, 26 IBLA 188 (1976); William M. Cannon, 20 IBLA 361 (1975).

The postmark date of a rental payment is generally deemed to be the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at an earlier date than indicated by the postmark. David R. Smith, 33 IBLA 63, 66 (1977); Edward Malz, 33 IBLA 22, 24 (1977); Richard L. Triplett II, 32 IBLA 369, 370 (1977); David W. Gregg, 32 IBLA 293, 294; and cases cited. Typically, such satisfactory evidence involves a statement by a postal official explaining possible reasons why the postmark date is later than the actual date of mailing. Edward Malz, *supra*; Elliot Davis, 26 IBLA 91 (1976); Paul D. Beaird, Jr., 26 IBLA 79 (1976); A. Helander, 25 IBLA 54 (1976). The evidentiary benefit of an explanation by a postal official is that, if a letter is placed in a mail box marked for collection on a particular day, it is usually processed soon enough after collection to bear that day's date in its postmark, barring mishandling by the postal service or other anomaly. Thus, in order to show that the payments were mailed on Sunday, January 29, appellant would have had to offer some persuasive explanation of why the letter was not also postmarked on January 29, as would normally be expected. Appellant offers no such explanation, relying only on the information in his check register, which does not effectively show that the payments were mailed on January 29. <sup>3/</sup>

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fn. 2 (continued)

appellant's check register and explanatory memorandum that he was able to carry on normal transactions during the period in question.

<sup>3/</sup> Appellant's system of check registering is, frankly, a total mystery. According to an "explanatory memorandum," appellant follows no chronological numbering system and routinely postdates checks. His explanation of the dating of the rental checks here depends entirely upon his assertion that certain other checks were actually written on dates other than what appears in his check

In the absence of such satisfactory corroborating evidence, BLM was correct in regarding the postmark date as the mailing date. David R. Smith, supra; Richard L. Triplett II, supra; David W. Gregg, supra.

Under 43 CFR 3108.2-1(c)(2), "[r]easonable 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." Mailing payments of annual rental on oil and gas leases in New York City just 2 days before they are due in Salt Lake City, Utah, does not constitute a reasonably diligent attempt to pay the rental in a timely manner. See Rosemary Weaver, supra; L. J. Arietta, supra; William M. Cannon, supra. Accordingly, BLM properly denied appellant's petition for reinstatement.

[2] Moreover, assuming appellant mailed his payment on Sunday, January 29, he still has not demonstrated that he was reasonably diligent. Not all mail boxes are emptied on Sunday. Unless appellant had good cause to believe that mail would be collected from the box in which he purportedly mailed his payments on January 29, he should have known that it would effectively have been mailed as of Monday, January 30, only 2 days before it was due in Salt Lake City, Utah. The burden was on appellant to present evidence that he had cause to so believe. For example, in Edward Malz, supra, the appellant alleged that he deposited his rental payment from New York City on the Sunday preceding Memorial Day in a mail drop which indicated that mail would be collected from that box at 4 p.m. on Sunday. The envelope was not postmarked until the following Tuesday. Malz discovered that the sign on the mail chute was wrong and proved his contention with a photograph of the sign and a letter from the postal official acknowledging that the collection information on the depository was in error.

Appellant did not meet this burden. Mailing payments of rental on an oil and gas leases on Sunday in New York City, just 3 days before they are due in Salt Lake City, Utah, does not constitute a reasonably diligent attempt to pay the rentals in a timely manner, in the absence of a clear showing that he was reasonably entitled to believe that the letter would be collected after it was deposited that same day.

Moreover, there is no explanation of the "PM" (post meridian) time of the January 30 postmark in New York, which left less than a day and a half for delivery in Salt Lake City.

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fn. 3 (continued)

register. This is far too irregular a system on which to be able to draw any tenable conclusions.

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.

Edward W. Stuebing  
Administrative Judge

We concur:

Frederick Fishman  
Administrative Judge

Douglas E. Henriques  
Administrative Judge

