

MERCEDES M. PERATT

IBLA 78-97

Decided August 28, 1978

Appeal from the Wyoming State Office, Bureau of Land Management (BLM), denying petition for reinstatement of oil and gas lease W 51755-D.

Reversed and remanded.

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

An oil and gas lease terminated by operation of law for failure to pay advance rental timely will be reinstated when lessee shows that failure to pay the rental on or before the anniversary date was not due to a lack of reasonable diligence in that payment was mailed in California 6 days before due in Wyoming State Office.

APPEARANCES: Mercedes M. Peratt, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Mercedes M. Peratt appeals from the November 15, 1977, decision of the Wyoming State Office, Bureau of Land Management, denying her petition for reinstatement of oil and gas lease W 51755-D, which terminated by operation of law for failure to pay annual rental on or before the anniversary date, November 1, 1977, a Tuesday. The October 27, 1977, check was in an envelope metered October 26, 1977, a Wednesday. The envelope, bearing no postmark, arrived in the BLM office November 3, 1977, a Thursday.

[1] A lease which has been so terminated may be reinstated if lessee can show that failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C.

§ 188(c) (1970). BLM, in its decision below, held that the following provision of implementing regulation 43 CFR 3108.2-1(c)(2) had not been fulfilled: "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."

On appeal, appellant submitted four affidavits in support of her claim of reasonable diligence. The first affidavit, her statement of reasons, asserts that she mailed her rental check on October 26, 1977, that the Beverly Hills Post Office recancels any letter mailed on a different day from that listed on the meter mark, that the office manager where she works has charge of the meter machine, and that her letters to the BLM office in Wyoming generally took 2 days while here she had allowed 6.

Because the envelope lacked a postmark, evidence is needed to establish that the date of mailing was sufficiently in advance of the due date to constitute reasonable diligence. Such corroborative evidence can include an affidavit by a witness to the mailing, W. A. Fitzhugh, 18 IBLA 323, 325 (1975), or postal service statements as to delays, Edward Malz, 33 IBLA 22, 24 (1977); A. Helander, 25 IBLA 54, 55 (1976).

Here, appellant provided corroboration in the form of affidavits. In addition to a statement of reliability from her employer, appellant presented an affidavit by the office manager. In this affidavit the office manager stated that as office manager she had control over the office stamping machine, that only she can affix the date, that she resets the machine daily, that she keeps the machine locked at night, and that October 26, 1977, was the correct date. Such an indication of office procedure can reinforce other showings and lend credibility to appellant's assertions. Elliott Davis, 26 IBLA 91, 95 (1976).

Appellant also submitted an affidavit from a co-worker who says appellant stated she wanted to deposit the mail for the 12:30 pickup, since it contained her lease payment. The co-worker states she saw appellant leave with the payment letter on October 26 and then return, having mailed it. Such evidence supports the conclusion that the rental payment was indeed mailed as stated. W. A. Fitzhugh, supra.

The 6 days from October 26, 1977, to November 1, 1977, are adequate to reasonably anticipate delays in the mail. 43 CFR 3108.2-1(c)(2). Edward Malz, supra; Eason Oil Company, 16 IBLA 109 (1974). Appellant's lease should therefore be reinstated.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the

Wyoming State Office decision is reversed and the case is remanded to the State Office for appropriate action.

Joseph W. Goss
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

James L. Burski
Administrative Judge

