

RONALD E. STONE

IBLA 78-545

Decided October 23, 1978

Appeal from decision of the Nevada State Office, Bureau of Land Management, denying reinstatement of geothermal resource lease N-9647.

Set aside and remanded.

1. Geothermal Leases: Reinstatement—Geothermal Leases: Termination

A geothermal resource lease automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date, and a terminated lease may only be reinstated if the lessee shows that the failure to pay the rental timely was justifiable or not due to a lack of reasonable diligence. Where late payment was caused by circumstances arising from the change in postal rates 3 days prior to the due date, the lease may be reinstated.

APPEARANCES: Ronald E. Stone, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Ronald E. Stone has appealed from the decision dated June 22, 1978, of the Nevada State Office, Bureau of Land Management (BLM), denying reinstatement of geothermal resource lease N-9647. The lease terminated by operation of law for failure to pay the annual rental on or before the anniversary date.

The anniversary date for this lease was June 1. The rental was received June 2, 1 day late. Effective at 12:01 a.m., May 29, 1978 (the Memorial Day holiday), the first-class postal rate was changed from 13 cents to 15 cents. In his petition for reinstatement, appellant stated in part:

My annual lease payment was mailed the first time with ample time allowed for the mail over the Memorial Day weekend. Unfortunately, the postage was increased from 13 cents to 15 cents, and my letter came back. It was mailed on the 31st of May, 1978, however, prior to the date due.

The BLM Office ruled that petitioner failed to show adequate justification for failure to pay timely, or "sufficiently strong evidence to cause this office to believe that your failure was not due to a lack of reasonable diligence."

[1] If the rental is not paid on or before the anniversary date, the lease terminates automatically by operation of law. Reinstatement of a geothermal lease terminated for failure to pay the rental timely may be allowed in the discretion of the Secretary of the Interior if the lessee shows that the failure to pay the rental timely was justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 1004(c) (1970); 43 CFR 3244.2.

Among other matters, in his appeal appellant asserts that the normal mail time between Bishop, California, where his mail was posted, and the Reno, Nevada, BLM Office is at most 2 days, that he originally mailed the rental within that time, but that his letter was returned to him because of deficient postage, and that had he "known of the severity of the situation," he would have made the trip to Reno and hand-delivered the check. In support of his appeal, appellant submits a statement from the postmaster at Bishop, who indicates that the holiday made it difficult to determine which mail had entered the mailstream prior to the change in the postal rate. However, on Tuesday, May 30, the Bishop Post Office began to return to the sender all mail which had entered the mailstream if it had a local return address and did not have the new required rate. He indicated that approximately "two feet of shortpaid mail a day for the first week of the new rate increase was returned for additional postage." He also indicated the post office did not keep a record of mail returned for additional postage.

The record does not contain the envelope in which the rental payment was transmitted to the BLM Office. The fact that the rental was actually received on June 2, and the statement of the Bishop postmaster, tend to support appellant's assertions that he originally mailed the payment in time for it to reach the BLM Office on or before the anniversary date.

The circumstances of this case are peculiar. Within a time frame of several days, there was the holiday, the increase in the postal rate, and appellant's transmittal of the rental payment. There is little doubt that if appellant's envelope had had the

correct postage on May 30, it would have reached the BLM Office in time. In any event, in terms of timeliness of transmittal, the original transmittal would be considered diligent. Cf. Edward Malz, 33 IBLA 22 (1977).

Under ordinary circumstances, the failure of a lessee to have the proper postage on a transmittal envelope would militate against his assertion of diligence. It would not be reasonable to transmit payment by mail without proper postage. Here, however, the combination of circumstances mitigates against using a harsh standard in judging the reasonableness of the action. During that time there was some general confusion concerning whether the increase would take effect, and how the mail would be handled by the post office during the week following the increase, if it went into effect without action by Congress. Publicity about the increase varied from area to area. Accordingly, we find that appellant exercised reasonable diligence, or, at least, that his error causing the 1-day delay was justifiable in the circumstances. The BLM decision will be set aside. When the case is returned to BLM it should reinstate the lease unless there are other reasons authorized by the law and regulation to deny the exercise of discretion to reinstate. See especially, 43 CFR 3244.2-2(b)(4).

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 set aside and the case remanded to the Nevada State Office, BLM, for further consideration.

Joan B. Thompson
Administrative Judge

I concur.

Newton Frishberg
Chief Administrative Judge

ADMINISTRATIVE JUDGE STUEBING DISSENTING:

The postal rate increase was effective on May 29, 1978 (12:01 a.m.). Therefore, to take advantage of the old rate, appellant should have posted payment on May 28 (Sunday). But he did not attempt to mail his rental payment until May 30 (Tuesday), the second effective day of the new rates. The Memorial Day holiday is irrelevant to the situation here, because appellant's first payment was not posted until after the holiday ended. Likewise, the prospect that the Congress would intervene to prohibit the new rates had been obviated by then.

The Post Office statement merely indicates that a letter bearing sufficient postage would have arrived at the BLM office by the anniversary date deadline. The issue here is not whether appellant allowed sufficient time for the payment to reach BLM, but whether placing insufficient postage on his payment constituted reasonable diligence or a justifiable excuse for late payment within the meaning of 43 CFR 3244.2-2(b). It did not. He was simply negligent.

Appellant writes that "his time was spread thin," that his failure to put the proper postage on the envelope was "clearly an oversight," and that he "should have put the proper postage on the envelope." He admits in his statement of reasons that he was not diligent, and contends only that his oversight was pardonable.

The principles established in oil and gas reinstatement cases generally govern cases involving reinstatement of geothermal leases, particularly those cases interpreting the standards of reasonable diligence and justifiable excuse. Page T. Jenkins, 35 IBLA 135 (1977).

Appellant himself established that reasonable diligence was not exercised here. As in Lula Mai Martin, 27 IBLA 360 (1976), a showing of justifiable excuse is the only avenue open for reinstatement here. Generally, forgetfulness is not a justifiable excuse for rental payment delays. Gent Davis, 36 IBLA 311 (1978); Jones K. Mullinax, 35 IBLA 73; Lula Mai Martin, *supra*. Nor can the change in postal rates be considered a justifiable excuse, since appellant did not attempt to mail his payment until the second effective day of the new rates, when, in the exercise of reasonable diligence, he should have known they were in effect.

For these reasons, I would affirm the BLM decision.

Edward W. Stuebing
Administrative Judge

