

BENJAMIN T. FRANKLIN

IBLA 78-526

Decided December 14, 1978

Appeal from decision of the Utah State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas leases U-32739 and U-32740.

Affirmed.

1. Accounts: Payments—Oil and Gas Leases: Termination — Payments: Generally

Where checks submitted in payment of annual rental on oil and gas leases are returned by the drawee bank as uncollectible because they are postdated, and there has been no bank error, no tender or payment of annual rental has been made. In the absence of any other payment prior to the anniversary date, the leases terminate automatically by operation of law.

2. Accounts: Payments—Oil and Gas Leases: Reinstatement — Payments: Generally

An oil and gas lessee who submits payment of annual rentals with checks postdated by 15 days is not reasonably diligent in attempting to make payment thereof. So doing with the expectation that negotiation of the checks will not be delayed past the anniversary date unreasonably anticipates either that BLM will withhold processing the checks until they become valid or that the drawee bank will honor them despite the postdating.

3. Oil and Gas Leases: Reinstatement

The inadvertent error of a person entrusted to mail payments for an oil and gas lease is not a justifiable excuse for delay in making the payment to warrant reinstatement of a terminated lease.

4. Oil and Gas Leases: Reinstatement

The absence of a lessee on vacation does not justify a failure to make timely rental payment.

APPEARANCES: Benjamin T. Franklin, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Benjamin T. Franklin appeals from the June 30, 1978, decision of the Utah State Office, Bureau of Land Management (BLM), denying his petition for reinstatement of oil and gas leases U-32739 and U-32740. We affirm.

Franklin's annual rental on these leases was due on or before June 1, 1978, their anniversary date. On May 16, 1978, Franklin's agent submitted this annual rental in person at BLM, via two checks, each dated "5/31/78." BLM processed these checks immediately. Upon presentation, the Bank of America, the drawee bank, returned these checks to BLM as uncollectible, because they were postdated. On June 7, 1978, BLM notified Franklin that his checks had been returned as uncollectible and that his leases had terminated automatically, as no rental payment had been received as of their anniversary date, and returned the checks to Franklin.

On June 20, 1978, the drawee bank resubmitted these checks to BLM and notified it that they were immediately collectible. On June 21, 1978, Franklin authorized BLM to redeposit the checks and notified it that he was petitioning for reinstatement of the leases. In a memorandum filed by Franklin on June 23, 1978, he explained that he had arranged to have a friend mail in the lease payments, as he was going on vacation, and that he had anticipated that they would be mailed to arrive on May 31, rather than submitted immediately on May 16.

On June 30, 1978, BLM issued its decision denying Franklin's petition for reinstatement. BLM held that there had been no timely payment of lease rental, as Franklin's rental checks had been dishonored and no bank error in so doing had been shown. Moreover,

BLM held that Franklin had not shown that the failure to make timely payment was either justifiable or not due to a lack of reasonable diligence, as he could have avoided the cancellation by making payment prior to going on vacation or transmitting the payment while on vacation. Franklin (appellant) 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) (1976). A check which a bank has refused to honor is not a tender or payment of the annual rental unless it is shown that the refusal to honor the check was the result of a bank error. Duncan Miller, 16 IBLA 379 (1974); John Oakason, 13 IBLA 80 (1973); James S. Guleke, 9 IBLA 73 (1973).

While the vice president of the drawee bank filed a statement at appellant's request, he did not admit bank error in dishonoring the checks. The letter states that "[t]he checks were returned to [BLM] because they were post dated." Appellant has not alleged or shown that the checks were returned erroneously by his bank. Therefore, as the checks were dishonored, their submission on May 16 was not a tender or payment. As no other tender or payment was made prior to the anniversary date of the leases, they accordingly terminated automatically by operation of law.

The state offices of BLM have thousands of active oil and gas lease accounts. To require that BLM afford individual treatment to annual rental payments in order to conform to peculiar conditions of payment imposed by the lessee would unduly complicate the orderly administration of these accounts. In order to insure that collection of appellant's checks would not be affected by their being post dated, BLM would have had to withhold depositing them until just prior to May 31. BLM was under no obligation to give these checks such special administrative treatment. The uncollectibility of the checks was appellant's fault, as he postdated the checks and his bank correctly dishonored them, and he could have avoided the problem simply by properly dating them.

In his statement of reasons, appellant implies that BLM could have collected on these checks prior to the anniversary date, even after they were returned as uncollectible, as it received them back from the drawee bank prior to June 1. Appellant did not prove this allegation, and nothing in the record so indicates. We accordingly reject his suggestion that BLM was responsible for the termination of the leases. Even assuming that the bank did return the checks to BLM before June 1, the result is the same. Because of the great volume of payments received on oil and gas leases, it would place

an undue burden on BLM personnel to require that they follow up on returned uncollectible checks to see if their status has changed.

It remains to be determined whether appellant is entitled to have these leases reinstated. We find that BLM properly concluded that appellant's failure to pay annual rental timely resulted from a lack of due diligence and was not justifiable.

[2] An oil and gas lessee who submits payment of annual rentals with checks postdated by 15 days is not reasonably diligent in attempting to make timely payment thereof. Paying with checks postdated by so much unreasonably anticipates either that BLM will withhold processing the checks until they become valid or that the drawee bank will honor them despite their being postdated. Submitting payment under these circumstances does not constitute a diligent effort to insure that payment will be timely. Appellant should not have postdated these checks. Having done so, however, it was up to him to insure that collection on the checks would not be prevented because of the postdating, either by submitting them to BLM in close proximity to May 31 or by directing his bank to pay the checks despite the postdating. As he failed to insure that payment would be made timely, we conclude that appellant was not reasonably diligent.

[3, 4] Nor has appellant shown that the failure to make timely payment was justified. He states only that he was on vacation and that he had instructed an agent to mail the checks to arrive at BLM on May 31, but that the agent instead inadvertently submitted them on May 16. The inadvertent error of a person entrusted to mail payments for an oil and gas lessee is not a justifiable excuse for delay in making the payment to warrant reinstatement of a terminated lease. David R. Smith, 33 IBLA 63 (1977), and cases cited. The absence of a lessee on vacation is also insufficient to justify the failure to make timely payment. Sara Turcsan, 23 IBLA 370 (1976), and cases cited; see Robert D. Nininger, 16 IBLA 200, aff'd Nininger v. Morton, No. 74-1246 (D.D.C. March 25, 1975).

This case may be distinguished from Lillie Belle Higgins, 38 IBLA 254 (1978), in that in Higgins BLM refused to accept the check because it was postdated a few days ahead to the due date, and it was returned to the lessee at a time when, if it had been deposited for collection, it would have been ripe for payment by the time it reached the drawee bank. By returning the check by mail at the time it did, BLM effectively foreclosed any possibility that the lease would, or could, be paid on time. It was the sense of the Board in Higgins that BLM should have deposited the check and allowed it to clear if the lessee's bank would honor it.

By contrast, in the case before us, the check was dated much further ahead, BLM did present it for collection instead of refusing it, and the lessee's bank did refuse to honor it, and returned it to BLM as uncollectible, so that the lease rental was unpaid on the due date through no fault of BLM.

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

I concur.

Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE GOSS DISSENTING:

I would follow the approach of the Board in Lillie Bell Higgins, 38 IBLA 254 (1978), and grant relief to appellant. If the lease should be held to have terminated, appellant clearly acted with due diligence and Congress would have intended the lease be reinstated under 30 U.S.C.

§ 188(c) (1976). Ram Petroleum, Inc., 37 IBLA 184, 188 (1978) (dissent); Lone Star Producing Company, 28 IBLA 132, 143-46 (1976) (dissent); Elwyn C. Hale, Las Cruces 063610 (August 27, 1968).

Joseph W. Goss
Administrative Judge

