

HELEN BACHA

IBLA 79-53      Decided January 29, 1979

Appeal from denial of petition for reinstatement of oil and gas lease U 9295 AF.

Affirmed.

1.      Oil and Gas Leases: Reinstatement

A petition for reinstatement of an oil and gas lease terminated for lack of timely rental payment is properly denied where the appellant does not show reasonable diligence in mailing the payment or a justifiable excuse for the delay in payment.

APPEARANCES: Helen Bacha, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Helen Bacha appeals from an October 2, 1978, decision of the Utah State Office, Bureau of Land Management (BLM) denying her petition for reinstatement of oil and gas lease U 9295 AF which terminated by operation of law on September 1, 1978, in the absence of a timely rental payment. Bacha's check for the rental in question was received by BLM on September 5, 1978, 5 days after the rental due date, in an envelope which was postmarked August 30, 1978. Bacha asserts that she mailed the check from Union, New Jersey, on August 29, 1978, expecting that it would reach Salt Lake City, Utah, by Friday, September 1.

[1] An oil and gas lease terminated by operation of law for failure to pay advance rental on time may be reinstated only where the lessee shows that his failure to make timely payment was either justifiable or not due to a failure to exercise reasonable diligence Helena Silver Mines, Inc., 30 IBLA 262 (1977). In the case before us, appellant asserts that she reasonably expected that her check, mailed 2 days before the due date, would reach Salt Lake City, Utah, from Union, New Jersey, in time to prevent her lease from terminating.

In Rosemary Weaver, 30 IBLA 227 (1977), the Board held that reasonable diligence normally requires sending rental payments sufficiently in advance of the anniversary date to account for normal delays. As we held in Weaver, a lessee who mails a payment from New York City to Cheyenne, Wyoming, 2 days before the anniversary date is not reasonably diligent. In the case before us, appellant's payment letter was postmarked August 30, 1978, which would allow only a single, intervening day for transmission of this letter to Utah from New Jersey. Even assuming that the letter was, in fact, mailed on August 29, 1978, we find that this mailing date did not allow for normal delays in collection and delivery and that appellant failed to exercise due diligence in making this payment. (See David R. Smith, 33 IBLA 63 (1977).)

Accordingly, 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.

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Frederick Fishman  
Administrative Judge

We concur.

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Douglas E. Henriques  
Administrative Judge

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James L. Burski  
Administrative Judge

