

MANUEL F. CUETO, JR.

IBLA 79-203

Decided April 16, 1979

Appeal from decision of the New Mexico State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease NM 25305.

Affirmed.

1. Oil and Gas Leases: Reinstatement

A lessee generally has not demonstrated reasonable diligence where the rental payment was postmarked in Austin, Texas, the day before it was due in Santa Fe, New Mexico. An allegation that the payment was mailed prior to the postmark date must be corroborated by sufficient evidence. An assertion that the rental check was mailed 2 days before the due date and an allegation that mail service between Texas and New Mexico "is overnight" is not sufficient alone to overcome the postmark date.

APPEARANCES: Manuel F. Cueto, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Manuel F. Cueto appeals from the January 23, 1979, decision of the New Mexico State Office, Bureau of Land Management (BLM), denying his petition for reinstatement of oil and gas lease NM 25305. The lease terminated automatically for failure to pay the rental on or before the anniversary date of the lease, June 1, 1978. The envelope transmitting appellant's payment was postmarked PM May 31 and was received in the BLM office on June 5.

In his statement of reasons appellant asserts that he mailed payment on May 30, 1978, from Austin, Texas, his record address, that postal service from Austin to Santa Fe, New Mexico, "is overnight," and that his payment may have reposed in BLM's post office box sometime before it was picked up.

[1] Reasonable diligence requires that the lessee show he deposited the rental payment in the mail sufficiently in advance of the due date to account for normal delays in the collection, transmittal and delivery of the mail. 43 CFR 3108.2-1(c)(2). Generally, mailing a rental payment in Austin, Texas, the day before it is due in Santa Fe, New Mexico, as the postmark here indicates, is not an exercise of reasonable diligence. Daniel Ashley Jenks, 36 IBLA 26 (1978); Richard L. Triplett II, 32 IBLA 369 (1977).

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 <sup>1/</sup> that the mailing occurred at an earlier date than indicated by the postmark. Jenks, supra; David R. Smith, 33 IBLA 63, 66 (1977); Edward Malz, 33 IBLA 22, 24 (1977); Richard L. Triplett, supra. 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). Appellant has offered no corroboration of his assertion that mail service from Austin, Texas, to Santa Fe, New Mexico, is overnight, nor any evidence to show that the mailing occurred earlier than indicated by the postmark. BLM was therefore correct in denying reinstatement.

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.

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Frederick Fishman  
Administrative Judge

We concur.

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Edward W. Stuebing  
Administrative Judge

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Joan B. Thompson  
Administrative Judge

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<sup>1/</sup> We note that appellant's petition for reinstatement is dated September 9, 1978, in which he recites that "this petition is being mailed before 5 p.m. on 9-10-78 at the same drop box in front of the main post office in Austin." However, the postmark on the envelope reads "PM 9 SEP 1978." A statement inked on the envelope states "Mailed 9/9/78 1:00 PM."

