

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying reinstatement of terminated oil and gas lease W-51883 and dismissing protest against subsequent issue of new lease covering the same lands.

Affirmed.

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

An oil and gas lessee may be entitled to reinstatement of the lease if it is shown, among other things, that reasonable diligence was exercised in mailing the payment, or that the delay in remitting the rental is justifiable. Where a lessee is unable to make the requisite showing, a petition for reinstatement is properly denied.

2. Oil and Gas Leases: Reinstatement

Under 30 U.S.C. § 188(c) (1976), the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of rental, unless rental payment is tendered at the proper office within 20 days after the due date.

3. Regulations: Generally

Persons dealing with the Government are presumed to have knowledge of pertinent rules and regulations, regardless of their actual knowledge of what is contained in such regulations.

APPEARANCES: William B. Burford, Esq., Hinkle, Cox, Eaton,  
Hensley, Midland, Texas, for appellant.

Coffield, &

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

John A. Steele, Jr., appeals from a decision dated January 31, 1979; by the Wyoming State Office, Bureau of Land Management (BLM), denying reinstatement of oil and gas lease W-51883. The lease was terminated automatically by operation of law when appellant failed to pay the annual rental on or before the anniversary date of the lease.

The anniversary date was October 1, 1978. However, payment was not received by BLM until January 22, 1979. On January 25, 1979, appellant filed a petition for reinstatement and a protest against issuance of lease W-66751 which included the lands formerly in appellant's lease. This protest was dismissed by the decision appealed from.

Lease W-51883 was originally issued to one Charles B. Smith. By assignment executed May 26, 1978, Smith assigned the lease to appellant herein subject to BLM approval. The assignment and request for approval thereof were filed with BLM on July 28, 1978. According to the decision appealed from, the assignment was approved on August 30, 1978, "and an approved copy was mailed to Mr. Steele at P.O. Box 147, Midland, Texas 79702." It is not clear from the file whether such mailing was return receipt, certified, nor does the file contain a return receipt.

Appellant explains in his statement of reasons that he employs an agent, Bill Ritter, who assists him in his business of buying and selling Federal oil and gas leases. Appellant states that neither he nor Ritter had received the approved assignment by October 5, 1978, though they had, prior thereto, telephoned with BLM concerning the matter. Appellant asserts that Ritter finally received a certified copy of the assignment in the second week of October. Appellant asserts that neither he nor Ritter learned of the actual procedure concerning reinstatement until January 18, 1979, when the overdue rental payment was mailed to BLM.

Appellant contends that he should be deemed to have tendered the payment within 20 days after October 1, 1978, because of the alleged dilatory manner in which BLM handled the lease assignment. Appellant also argues that his failure to pay on or before the anniversary date was justifiable and not due to lack of reasonable diligence because he attempted, fruitlessly, to obtain a copy of the assignment in time to make rental payments.

[1] A lessee may be entitled to reinstatement of the lease if it is shown, among other things, that reasonable diligence was exercised in mailing the payment, or that the delay in remitting rental is justifiable. 30 U.S.C. § 188(c) (1976). Where, as in the case at bar, a party is unable to make the requisite showing, a petition for reinstatement is properly denied. See, e.g., Ronald C. Hill 38 IBLA 315 (1978); J. R. Oil Corp., 36 IBLA 81 (1978); John D. Holt, 36 IBLA 257 (1978); James Donoghue, 25 IBLA 280 (1976); Levi T. Bellah, 22 IBLA 1 (1975); Pauline G. Thornton, 17 IBLA 251 (1974); Heirs of John W. Firth, 17 IBLA 125 (1974). Even assuming, arguendo, a failure of BLM to process and mail the assignment promptly as alleged by appellant, such failure neither interdicted or interfered with the payment of rental timely by any of the parties involved. Appellant's contention that "the failure of John A. Steele, Jr., to make timely payment of the rentals for Lease W 51883 was justifiable and was not due to lack of reasonable diligence on his part but was rather caused by the negligence of the Bureau of Land Management" is fallacious since the failure to pay timely rental was not the proximate result of any deficiency ascribed by appellant to BLM personnel.

[2, 3] However, reinstatement is here precluded by regulation 43 CFR 3108.2-1(c) which states in part:

Reinstatement. (1) Except as hereinafter provided, the authorized officer may reinstate a terminated lease which has been or is hereafter terminated automatically by operation of law for failure to pay on or before the anniversary date the full amount of rental due, provided that (i) such rental was paid or tendered within 20 days thereafter, and (ii) it is shown to the satisfaction of the authorized officer that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. [Emphasis supplied.]

The regulation is dispositive of this appeal, since appellant, by failing to tender late payment within 20 days after the anniversary date, is barred from having his lease considered for reinstatement. The rental herein remained unpaid in excess of 90 days after the original due date. As the Board has consistently held, the Secretary has no authority to reinstate a terminated lease unless payment has been tendered within 20 days of the due date, as the statute only empowers him to reinstate leases so paid and none other. Susan Krammes Sammis, 37 IBLA 269 (1978). It avails appellant nothing to argue that BLM may have been dilatory in approving the assignment of the lease. The assignment process did not suspend the obligation to make timely payment. Persons dealing with the Government are presumed to have knowledge of pertinent rules and regulations, regardless of their actual knowledge of what is contained in those regulations. University of the Trees, 40 IBLA 74 (1979).

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.

Frederick Fishman  
Administrative Judge

I concur:

Douglas E. Henriques  
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

The affidavit of appellant's agent Bill Ritter states:

3. That affiant caused an assignment of United States Oil and Gas Lease W-51883 \* \* \* executed in triplicate and accompanied by the necessary filing fee and a Request for Approval, to be delivered to the Wyoming State Office of the Bureau of Land Management at Cheyenne, Wyoming, on July 28, 1978;

4. That affiant did not retain a copy of said assignment for reference to the date rentals would be due, believing that he would receive the approved assignment from the Wyoming State Office of the Bureau of Land Management within enough time before October 1, 1978 that rentals would be paid;

5. That affiant contacted the Wyoming State Office of the Bureau of Land Management by telephone on August 15, 1978 and spoke with Marion P. Burke of that office, who told the affiant that the approved assignment of said lease should have been mailed to John A. Steele, Jr., whereupon the affiant requested that he be mailed a certified copy of the approved assignment, and that Burke agreed to furnish such certified copy by mail;

6. That the affiant did not receive said certified copy before October, 1978;

7. That on or about October 5, 1978, the affiant again contacted the Wyoming State Office of the Bureau of Land Management and again spoke with Marion P. Burke, who informed the affiant that she had not mailed the certified copy of said assignment to the affiant because she had copied the affiant's telephone number incorrectly, whereupon the affiant again requested a certified copy of the approved assignment of said lease \* \* \*.

I am inclined toward the position that if appellant did thus attempt to ascertain the due date some 45 days in advance thereof, then he has acted with reasonable diligence and his failure to make timely payment was justifiable. As appellant points out, the Board has held that diligence in making inquiry of BLM is reasonable diligence. Joseph E. Steger, 20 IBLA 206 (1975).

It is not necessary, however, to reach these questions. No rental payment was received within 20 days of the time due; I concur that appellant has not shown that he is entitled to relief under 30 U.S.C. § 188(c) (1976).

Joseph W. Goss  
Administrative Judge.

