

GLEN C. CHRONISTER

IBLA 79-229

Decided July 11, 1979

Appeal from decision of the Utah State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease U-34708.

Affirmed.

1. Oil and Gas Leases: Reinstatement

The postmark date on a letter bearing payments of annual rental for an oil and gas lease will be deemed to be the date of mailing, in the absence of satisfactory evidence corroborating the lessee's assertion that the payments were mailed before the postmark date.

Where appellant alleges he mailed payment from York, Pennsylvania to Salt Lake City, Utah, on November 28, 1978, a Wednesday, and payment was due there on December 1, 1978, a Friday, but was not received until December 4, 1978, the following Monday, and envelope was postmarked November 30, 1978, these facts ordinarily do not constitute a reasonably diligent attempt to pay the rental in a timely manner.

APPEARANCES: Glen Chronister, Hanover, Pennsylvania, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Glen C. Chronister appeals from the January 31, 1979, decision of the Utah State Office, Bureau of Land Management (BLM), denying his petition for reinstatement of oil and gas lease U-34708. We affirm.

In his petition he asserted thus:

I sent you the check on the 28 [sic] of November. I did not realize there [sic] I was thinking the first of the

year and when I looked again it was December 1st. I did mail it to you and did not know it took that long for the mail to arrive there.

The dispositive issue in this dispute is when appellant mailed the rental payment. He asserts that he mailed it on November 28, 1978. However, the envelope in which appellant mailed this payment bears the following postmark: "YORK, PA 30 NOV. 1978." BLM concluded that appellant mailed the payment on November 30, 1978. The resolution of this issue is critical to the case, as a lessee who mails a payment from York, Pennsylvania to Salt Lake City within 3 days of its due date is reasonably diligent (see George C. Ott, 30 IBLA 146 (1977); Eason Oil Co., 16 IBLA 109 (1974)), while one who waits until just 1 day prior to the due date (here, on November 30), is not. See Rosemary Weaver, 30 IBLA 227 (1977); L. J. Arietta, 26 IBLA 188 (1976); William M. Cannon, 20 IBLA 361 (1975).

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 that the mailing occurred at an earlier date than indicated by the postmark. David R. Smith, 33 IBLA 63, 66 (1977); Edward Malz, 33 IBLA 22, 24 (1977); Richard L. Triplett II, 32 IBLA 369, 370 (1977); David W. Gregg, 32 IBLA 293, 294; and cases cited. 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. Beard, Jr., 26 IBLA 79 (1976); A. Helander, 25 IBLA 54 (1976). No such evidence has been offered and no justifiable basis for the failure to pay rental timely has been shown. Cf. J. R. Oil Corp., 36 IBLA 81 (1978); Harpel Petroleum Corp., 36 IBLA 39 (1978); Jones K. Mullinax, 35 IBLA 73 (1978); Lloyd M. and Adelheid A. Patterson, 34 IBLA 68 (1978).

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

We concur:

Anne Poindexter Lewis
Administrative Judge

Douglas E. Henriques
Administrative Judge

