

Editor's note: Appealed – aff'd, Civ.No. C-79-366 (D.Wyo. April 11, 1980)

DONALD E. MONINGTON

IBLA 79-195

Decided September 11, 1979

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer W 65547.

Affirmed.

1. Oil and Gas Leases: Applications: Generally – Oil and Gas Leases: Applications: Drawings

A drawing entry card which is not dated in the space provided on the card is not "fully executed," as required by 43 CFR 3112.2-1, and must be rejected.

APPEARANCES:

Ira B. Kurtzberg, Esq., Stein, Gillies and Kurtzberg, Farmingdale, New York, for appellant; Morris R. Massey, Esq., Brown, Drew, Apostolos, Massey and Sullivan, Casper, Wyoming, for Bert L. Stovall.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Donald E. Monington appeals from the decision, dated January 2, 1979, of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his lease offer for Parcel No. WY 0854 (Serial No. W 65547). Appellant's drawing entry card (DEC) was drawn first in the September 1978 drawing of simultaneous oil and gas lease offers in Wyoming. The offer was rejected because the DEC was incomplete in that no date appeared by the signature.

On appeal, appellant asserts that the failure to date the card is a procedural error, going to form, rather than substance and should not disqualify the offeror where he meets the requirements as to qualifications of 43 CFR Subpart 3102. Appellant argues that 43 CFR

3112.2-1(a), which requires the DEC to be signed and "fully executed," is ambiguous because it does not define "fully executed." Appellant claims rejection of his offer denies him the statutory preference to a lease acquired by being the first drawn qualified applicant. It is argued that lack of a date in no way causes harm or prejudice to other applicants. Appellant asserts that BLM should be estopped from rejecting his offer because by not returning his filing fee when the offer was rejected, BLM violated its own regulations. Appellant states "upon information and belief" that there was a redrawing necessitated by computer problems and, as his offer was accepted at the first drawing, it should be accepted on the redrawing because BLM did not notify appellant that the card was defective. Finally, appellant claims that by accepting the DEC for the drawing, BLM accepted the offer by appellant and the card should be accepted.

Bert L. Stovall, the number two drawee, filed an answer to the appeal, citing numerous Board decisions upholding rejection of the offer where the DEC is undated. He also correctly pointed out that the instructional circular to which appellant refers regarding return of the filing fee pertains to undated remittances, not drawing cards. We adhere to our holdings in previous cases and affirm the decision of the State Office.

[1] It is well established that a drawing entry card which is not dated in the space provided on the card is not "fully executed," as required by 43 CFR 3112.2-1, and must be rejected. The District Court of Wyoming has affirmed our position in Sorenson v. Andrus, 456 F. Supp. 499 (D. Wyoming 1978). There the offeror filled in the month and year but omitted the day from the date. In upholding the Board's decision the court relied upon the fact that third party interests are involved in these drawings and noted that the requirement that the card be "fully executed" is uniformly applied. See Harry A. Zuckerman, 41 IBLA 372 (1979); Theodore R. Kuhn, 38 IBLA 135 (1978); John G. Keane, 37 IBLA 364 (1978); Anchors and Holes, Inc., 33 IBLA 339 (1978); Thomas C. Moran, 32 IBLA 168 (1977); John Willard Dixon, 28 IBLA 275 (1976); Frank DeJong, 27 IBLA 313 (1976); Herbert W. Schollmeyer, 25 IBLA 393 (1976); Roy Flamm, 24 IBLA 10 (1976). The date is important because it shows that, as of a particular date, the offeror, by his signature, certifies all the statements made on the card. If no date appears on the card, there is no certification, and the entry card must be rejected. Thomas C. Moran, *supra*, and cases cited; see Walter M. Sorenson, 32 IBLA 345 (1977). Appellant raises no arguments which warrant a departure from this rule. A request for oral argument or hearing is denied.

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.

Joan B. Thompson
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

James L. Burski
Administrative Judge

