

Appeal from decision of the Utah State Office, Bureau of Land Management, denying reinstatement of terminated oil and gas lease, U-31543-E.

Reversed and remanded.

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

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 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: Termination -- Oil and Gas Leases:
Reinstatement

Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental payment 2 days before the anniversary date of the lease does not constitute reasonable diligence.

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

A lack of diligence may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's

control which affected his or her actions in paying the rental fee. A lessee's suffering severe, incapacitating injuries during the month before the anniversary date of the lease may constitute proximate cause sufficient to justify late payment of the rental and to warrant reinstatement of the lease.

APPEARANCES: Norman C. Stroink, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Norman C. Stroink has appealed the decision of the Utah State Office, Bureau of Land Management (BLM), denying reinstatement of oil and gas lease U-31543-E. 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 February 1, 1978. Appellants' payment envelope was postmarked January 30, 1978, and received in the Utah office on February 3, 1978. Accordingly, by decision dated February 7, 1978, appellant was advised that the lease had terminated automatically by operation of law. 30 U.S.C. § 188(b) (1976).

Appellant timely petitioned for reinstatement, stating as grounds therefor, that he had suffered an injury to his hip prior to the due date. By letter of February 21, 1978, the State Office inquired of the duration and extent of the injury in order that a determination could be made if these circumstances qualified for reinstatement. When no response was received to this inquiry, the State Office issued its decision dated March 13, 1978, denying the petition. This appeal followed.

Appellant has submitted with the appeal a statement that during January 1978, the month before the anniversary date of the lease, he suffered a severe fall from his rear steps causing several injuries which incapacitated him for the remainder of the month. He indicates he lives alone without any assistance and as soon as he was physically able, he mailed in the rental.

An oil and gas lease which has terminated for failure to pay rental timely may only be reinstated if the lessee can show that he meets the criteria of 30 U.S.C. § 188(c) (1976). That statute requires, among other things, that the failure to pay rental timely "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee."

[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 a lessee is unable to make the requisite showing, a petition for reinstatement is properly denied. See, e.g., Ronald 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).

[2] Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account for normal delays in collection, transmittal and delivery of the mail. 43 CFR 3108.2-1(c)(2). We earlier noted that appellant's payment envelope was postmarked 2 days before payment was due. This Board has repeatedly held that mailing the rental payment 1 or 2 days before or on the anniversary date of the lease does not constitute reasonable diligence. See, e.g., Hubert W. Scudder, 36 IBLA 191 (1978); David R. and Darla L. Smith, 33 IBLA 63 (1977); Adolph Muratore, 31 IBLA 39 (1977); Henry Carter, 24 IBLA 70 (1976); William N. Cannon, 20 IBLA 361 (1975). Thus, appellant plainly failed to act in a reasonably diligent manner.

However, a lack of reasonable diligence may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. Generally, this standard contemplates occurrences such as injury, Hubert W. Scudder, 35 IBLA 58 (1978); or illness, Billy Wright, 29 IBLA 81 (1977); David Kirkland, 19 IBLA 305 (1975).

In explaining when failure to pay rental timely is justifiable, we stated in Louis Samuel, 8 IBLA 268, 274 (1972), appeal dismissed, Civil No. CV-74-1112-EC (C.D. Cal. 1975):

This is thus a * * * test, dependent upon the factual milieu of the individual. We believe that cases which are so covered are those where the death or illness of the lessee or member of his close family occu[r]ring with immediate proximity to the anniversary date, have been a causative factor in his failure to exercise reasonable diligence.

We find that the "factual milieu" of this case falls within the range of circumstances deemed justifiable within the meaning of the reinstatement provisions in 30 U.S.C. § 188(c) (1976). Through factors outside his control, i.e., injuries in a fall, appellant was incapacitated prior to the anniversary date. Obviously, this prevented him from attending to "the normal conduct" of his business. Billy Wright, supra; Ada E. Lundgren, 17 IBLA 132 (1974).

Accordingly we find that appellant's oil and gas lease qualifies for reinstatement under 30 U.S.C. § 188(c) (1976), all else being regular. 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 reversed and remanded to the Utah State Office for action consistent herewith.

Anne Poindexter Lewis
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Newton Frishberg
Chief Administrative Judge

