

PHYLLIS LANE ZEHR
ALICE M. CONTE

IBLA 79-525

Decided December 19, 1979

Appeal from a decision of the Montana State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease M 40299-I.

Reversed.

1. Oil and Gas Leases: Reinstatement

The Secretary may reinstate an oil and gas lease, terminated for failure of the lessee to make timely payment of the rental due if, inter alia, it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence.

2. Evidence: Generally -- Oil and Gas Leases: Reinstatement

Ordinarily, the postmark on a letter will be assumed to indicate the date and place of mailing in the absence of evidence to the contrary. Reasonable diligence is found where a rental payment, due in Billings, Montana, on June 1, 1979, was actually mailed from Wilmington, Delaware, on May 29, 1979, despite the fact that the envelope containing such payment bears only a Billings, Montana, postmark of June 2, 1979.

APPEARANCES: Phyllis Lane Zehr, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Appeal has been filed by Phyllis Lane Zehr in behalf of Alice M. Conte and herself from a decision dated June 21, 1979, wherein the Montana State Office, Bureau of Land Management (BLM), denied their

petition for reinstatement of noncompetitive oil and gas lease M 40299-I, terminated for failure to pay annual rental on or before its anniversary date of June 1, 1979. The decision stated that as the envelope containing the rental payment was postmarked June 2, 1979, and was received by BLM on June 4, such mailing after the due date did not constitute reasonable diligence.

[1] Section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188 (1976), provides that oil and gas leases on which there is no well capable of producing oil or gas in paying quantities shall terminate automatically if rental is not paid on or before the anniversary date of the lease, but further, that the Secretary of the Interior may reinstate such a terminated lease if the full amount of the rental is tendered within 20 days after the anniversary date of the lease and it is demonstrated to the satisfaction of the Secretary that failure to make timely payment was either justifiable or not due to a lack of reasonable diligence.

[2] In the present case, the postmark reads "Billings, MT 591, June 2 A.M. 1979." Appellant Zehr is domiciled in Claymont, Delaware. Ordinarily, the postmark on a letter will be deemed the date of mailing in the absence of evidence to the contrary. Joseph W. Semien, 41 IBLA 185 (1979). It also will be assumed to indicate the place of posting the envelope. This inference, however, may be rebutted where the appellant supplies satisfactory circumstantial evidence sufficient to lend credibility to the assertion that the mailing substantially antedated the postmark, and the place of mailing was different from that of the postmark. Edward Malz, 33 IBLA 22 (1977).

Appellant states that the check in payment of the rental for the subject lease was written May 28, 1979, and was deposited in the United States mails at Wilmington, Delaware, on May 29 in an envelope correctly addressed to BLM, P.O. Box 30157, Billings, Montana 59107. It was her belief that this time of mailing was early enough to allow delivery of the envelope before the BLM office closed June 1, 1979. It is her conjecture that the envelope escaped being cancelled in Wilmington, and later when the absence of the cancellation was noted by the Postal Service in Billings, delivery was delayed to permit the cancellation to be belatedly applied to the envelope. We find this conjecture not to be unreasonable.

Appellant has submitted a certificate from her employer that she was present at her proper place of employment in Wilmington, Delaware, during the entire period from May 27 to June 2, 1979. We thus find her explanation of a timely posting of the rental payment credible.

Thus, assuming appellant did mail the check on May 29 the question becomes whether she displayed reasonable diligence, as defined by 43 CFR 3108.2-2(c)(2): "Reasonable diligence normally requires

sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment." Correspondence in this case between appellant and BLM, subsequent to the mailing of the rental check, has been delivered on the second day after mailing, so that appellant's mailing on May 29 of the payment due June 1 falls within the ambit of reasonable diligence. The lease of Mesdames Zehr and Conte should, in consequence, be reinstated.

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 the case remanded for action consistent with this opinion.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joan B. Thompson
Administrative Judge

