

HAROLD W. FULLERTON

IBLA 79-507

Decided February 29, 1980

Appeal from decision of the Montana State office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease M-40332.

Affirmed.

1. Oil and Gas Leases: Reinstatement

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied. Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease.

2. Oil and Gas leases: Reinstatement

Placing payment for annual rental for an oil and gas lease in a residential mailbox for posting by the Postal Service without later checking to insure that the payment was picked up does not constitute reasonable diligence, especially when the lessee's regular mail delivery is to a different address. Failure of the payment to then be timely made is not justified,

even though the Postal Service admittedly was not making regular stops at that mailbox, because timely payment was still within the lessee's control through the exercise of reasonable diligence.

APPEARANCES: Harold W. Fullerton, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE BURSKI

Harold W. Fullerton has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated June 15, 1979, denying reinstatement of oil and gas lease M-40332 which terminated by operation of law pursuant to 43 U.S.C. § 188(b) (1976) for failure to pay annual rental due on June 1, 1979. BLM received appellant's rental payment on June 5, 1979, in an envelope bearing a June 4, 1979, postmark.

[1, 2] A terminated oil and gas lease may be reinstated upon proof that the lessor exercised reasonable diligence in submitting the payment or that lack of diligence was justified. 30 U.S.C. § 188(c) (1976). In the absence of such proof, a petition for reinstatement is properly denied. See, e.g., William A. Klug, 43 IBLA 255 (1979); James E. Kordosky, 43 IBLA 63 (1979); J. R. Oil Corp., 36 IBLA 81 (1978). Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). Untimely payment of rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Estate of Kenneth F. Krammes, 40 IBLA 147 (1979); Herbert W. Scudder, 35 IBLA 58 (1978); Lloyd M. Patterson, 34 IBLA 68 (1978).

In his statement of reasons, appellant claims that he called BLM and then posted his rental payment dated May 15, 1979, in his rural mailbox on May 18, 1979, to be certain he would have plenty of time to meet the June 1, 1979, payment due date. However, we have generally considered the postmark date of a rental payment, in this case June 4, to be the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at a date earlier than indicated by the postmark. Annie Mae Buckley, 44 IBLA 99 (1979); Daniel Ashley Jenks, 36 IBLA 268 (1978); David R. Smith, 33 IBLA 63, 66 (1977). Typically, satisfactory evidence requires a statement by a postal official explaining possible reasons why the postmark date is later than the actual date of mailing. Edward Malz, 33 IBLA 22, 24 (1977); Elliot Davis, 26 IBLA 91 (1976); Paul D. Beaird, Jr., 26 IBLA 79 (1976); A. Helander, 25 IBLA 54 (1976).

Appellant explains that he and his family had lived at Box 180 until early May, moved to Box 204, and "began posting our mail in that box. We post very little mail and were living at both locations until well in June and had no reason to question or notice that we were not receiving mail service at Box 204, as all our regular mail was still addressed as 180." After receiving notice that his rental payment was late, appellant states that he talked to the postmaster and learned that mail had not been picked up at Box 204 until sometime in June. He further explains that "[a]pparently there have been quite a number (2 or 3) new route delivery people since our regular carrier retired and apparently the new people were not as diligent as the old carrier in updating changes." Appellant also submits the following explanation for the interruption in mail service to Box 204 signed by the Postmaster of Florence, Montana:

To Whom It May Concern:

On May 11th we received a forwarding order from the previous residents at Rt. 1 Box 204. Not realizing the Fullertons were moving into that location the mail carrier by-passed that mailbox which possibly created a delay of their out-going mail.

This situation had been corrected and they are now receiving their mail at the above address.

We conclude that mail pickup at appellant's new residence was erratic at best during May and June, 1979, and that appellant was unaware of the problem. At the same time, we cannot conclude that appellant exercised reasonable diligence or that the untimely delivery of the rental payment was entirely beyond appellant's control. Knowing the importance of timely delivery, as appellant claims he does, it was not reasonably diligent to have placed the payment in the box at his new residence and never to have checked to make sure that it was picked up over a period of approximately 2 weeks. So long as the envelope was still in his box, appellant continued to have control over it. Appellant apparently had not notified the Postal Service of his change of address since his mail was still delivered at his old address. While the Postal Service may regularly pickup outgoing mail from a personal residence, it is not reasonable to rely on that practice, where no record of residency was made with the Postal Service and where no regular mail delivery was occurring.

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.

James L. Burski  
Administrative Judge

We concur:

Frederick Fishman  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

