

DEANE A. DUNHAM

IBLA 80-98

Decided May 27, 1980

Appeal from decision of the Oregon State Office, Bureau of Land Management, denying reinstatement of oil and gas lease OR 18341.

Affirmed.

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

An oil and gas lease terminated automatically by operation of law for failure to pay rental timely when the rental check, although timely received by the appropriate BLM office, is not honored by the bank upon which it is drawn, when presented for payment.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

An oil and gas lease terminated for nonpayment of rental may be reinstated under 30 U.S.C. § 188(c) (1976) only if the failure to pay was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. Where a lessee submits his rental check timely, but the check is nonnegotiable because insufficient funds are on deposit in the particular bank when the check is presented for payment, the lessee has not exercised reasonable diligence. Where the lessee provides no evidence that the rental check was dishonored through the fault of someone other than the lessee, there is no basis for reinstatement of the lease. In no case may the lease be reinstated where the rental payment is not tendered within 20 days following the anniversary date of the lease.

APPEARANCES: Deane A. Dunham, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Deane A. Dunham 1/ appeals from the October 3, 1979, decision of the Oregon State Office, Bureau of Land Management (BLM), denying reinstatement of oil and gas lease of acquired lands, OR 18341, because the corrective payment of rental was not made within the 20 days immediately following the anniversary date of the lease, 43 CFR 3108.2-1(c). The lease had terminated by operation of law under 30 U.S.C. § 188(b) (1976) for failure to pay rental on or before the anniversary date, July 1, 1979. Appellant had timely submitted a check for the rental, drawn on the Rainier Bank, Seattle, Washington. However, the check was returned to the State Office as an uncollectible item by the Federal Reserve Bank.

In his statement of reasons for appeal, appellant states that the check would have been paid by his bank if it had been timely presented for payment. He argues that a check received by BLM on June 28, 1979, should have been deposited for collection earlier than July 11, 1979. He states that after transmitting the check to BLM, he, in early July 1979, had to go to Texas where his son had been seriously injured in an automobile accident. He states that in "the rush and bustle of concern \* \* \* we apparently overdrew our account at the bank." Being away from Seattle he was unaware that his check for the rental payment had not been honored by his bank. When he received the lease termination notice from BLM, dated August 21, 1979, it was long past the twentieth day following the anniversary date of July 1, and he could not resubmit the rental to qualify for consideration of reinstatement. He opines that he should not be penalized for the delay by BLM in submitting his check, timely tendered, for payment.

[1] An oil and gas lease terminates automatically by operation of law for failure to pay rental timely when the rental check, although timely submitted to and received by the proper BLM office, is not honored by the bank upon which it is drawn. Don C. Wiley, 35 IBLA 302 (1978); Duncan Miller, 16 IBLA 379 (1974). Appellant has submitted nothing to indicate there was any error on the part of his bank in refusing to honor his check tendered as payment of the rental. He thus cannot receive any consideration on the basis that the bank erroneously did not honor his check. See Pauline V. Trigg, 31 IBLA 296 (1977); Gretchen Capital, Ltd., 29 IBLA 247 (1977); WIKOA, Inc., 22 IBLA 6 (1975). In the circumstances of this case, appellant's lease must be considered to have terminated for nonpayment of rent.

[2] An oil and gas lease terminated for nonpayment of rent may be reinstated under 30 U.S.C. § 188(c) (1976), if the late payment is

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1/ Lease OR 18341 issued July 1, 1978, to Deane A. Dunham, Daniel B. Vance, Alan A. Wentzel, and Stanton I. Rowell.

made within the allotted time and if it is shown to the satisfaction of the Secretary of the Interior that the failure to pay the rental timely was either justifiable or not due to lack of reasonable diligence on the part of the lessee. The mere fact that a check was tendered to BLM prior to the anniversary date of the lease does not demonstrate reasonable diligence where that check was not negotiable when presented for payment at the drawer's bank. Cf. James S. Guleke, 9 IBLA 73 (1973).

The question becomes whether the reason given by appellant for the nonnegotiability of the check constitutes a justifiable excuse. Failure to pay rental timely may be justifiable when it was caused by factors outside the lessee's control, which were the proximate cause of the failure. Leonard A. J. Tancredi, 32 IBLA 325 (1977). Appellant alleges only that if his check had been presented by BLM for payment in a more expeditious manner, the check would have been paid by his bank. The statute, however, permits reinstatement of an oil and gas lease terminated automatically for nonpayment of rental on or before the anniversary date of the lease only if the full amount of rental due is paid or tendered to BLM within 20 days after the anniversary date of the lease. 30 U.S.C. § 188(c) (1976). This was not done here. Despite the difficulties alleges by appellant, there is not authority to grant the relief sought.

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.

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Douglas E. Henriques  
Administrative Judge

I concur:

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James L. Burski  
Administrative Judge

## ADMINISTRATIVE JUDGE GOSS CONCURRING:

The only question of the case is whether appellant made payment of the rental within 20 days of its due date. Because of the unfortunate combination of circumstances, appellant admits he did not make any acceptable payment within the 20-day period. There is no statutory authority to reinstate the lease.

The main opinion states: "The statute \* \* \* permits reinstatement \* \* \* only if the full amount of rental due is paid or tendered to BLM within 20 days after the anniversary date of the lease. 30 U.S.C. § 188(c) (1976)." Since the question is not before us, I would prefer not to rule on whether relief could be granted where something less than the full amount of rental is paid within the 20-day period. It is possible that 30 U.S.C. § 188(c) (1976) should be read in pari materia with section (b), which grants relief in the following circumstances:

Provided, That if the rental payment due under a lease is paid on or before the anniversary date but either (1) the amount of the payment has been or is hereafter deficient and the deficiency is nominal, as determined by the Secretary by regulation, or (2) the payment was calculated in accordance with the acreage figure stated in the lease, or in any decision affecting the lease, or made in accordance with a bill or decision which has been rendered by him and such figure, bill, or decision is found to be in error resulting in a deficiency, such lease shall not automatically terminate unless (1) a new lease had been issued prior to May 12, 1970, or (2) the lessee fails to pay the deficiency within the period prescribed in a notice of deficiency sent to him by the Secretary.

As one example, it would seem unduly harsh and not in accord with the legislative framework to deny a lessee reinstatement where there was a justifiable reason for the delay in payment, but due to a BLM billing error the lessee does not pay the full amount within the 20-day period. Such questions, however, are best considered on the basis of briefs filed when and if the problem is presented.

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Joseph W. Goss  
Administrative Judge