

WILLIAM J. BARRETT

IBLA 80-691

Decided July 21, 1980

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting drawing entry card lease offer W 70203.

Affirmed.

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

A drawing entry card oil and gas lease offer is properly rejected where the card bears a date more than 10 days prior to the beginning of the filing period.

APPEARANCES: William J. Barrett, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

William J. Barrett appeals the May 15, 1980, decision of the Wyoming State Office, Bureau of Land Management, which rejected his drawing entry card (DEC) lease offer W 70203 drawn first for Parcel WY 5153 in the October 1979 list of lands available for simultaneous oil and gas leasing. The rejection was for the reason that the DEC was dated July 17, 1979, more than 10 days prior to the beginning of the filing period, October 15, 1979, citing George L. Lahusen, 45 IBLA 310 (1980).

Appellant contends the date on his DEC was a clerical error – an honest mistake – as he could not have known in July that Parcel WY 5153 would appear in the October 1979 list. He alleges that he determined to file for Parcel WY 5153 on or about October 15, and completed the DEC at that time. The check for the filing fee was dated October 17, 1979, and the DEC was received by the Wyoming State Office October 19, 1979. He argues that acceptance of the DEC by BLM was admission that it was a legal application. He contends that the rule in Lahusen is being applied retroactively to his filing made in 1979.

While the Department of the Interior does not require oil and gas lease drawing entry cards to be signed and dated at the same time, the signer does attest to the truth of the statements on the card as of the date placed on the card, and is bound by and to its terms. Estate of Charles D. Ashley, 37 IBLA 367 (1978); Evelyn Chambers, 31 IBLA 381 (1977).

The pertinent regulation, 43 CFR 3112.2-1(a), provides:

Offers to lease such designated leasing units by parcel numbers must be submitted on a form approved by the Director, "Simultaneous Oil and Gas Entry Card" signed and fully executed by the applicant or his duly authorized agent in his behalf. The entry card will constitute the applicant's offer to lease the numbered leasing unit by participating in the drawing to determine the successful drawee.

[1] In Kathryn J. Eckles, 28 IBLA 390 (1977), this Board determined that a DEC did not have to be dated on the exact date it is filed. Instead, to allow for mailing, the Board determined that a DEC would not be rejected if dated 10 days prior to the beginning of the filing period. Eckles relied upon Race v. Larsen, 43 L.D. 313 (1914), and the regulation that resulted from Race, 43 CFR 1812.2(2), which applies to applications to make entry. In Eckles, the 10-day rule was explicitly made applicable to oil and gas lease offers. Kathryn J. Eckles, *supra* at 393. The decision in Lahusen, cited by the State Office, simply applied the existing regulations and case law. Lahusen was not a new interpretation in 1980, nor was it applied retroactively to this case.

Appellant's DEC carried a date more than 10 days prior to the beginning of the simultaneous filing period for October 1979. Therefore, it was proper to reject it.

The contention that BLM had admitted the legality of his DEC by cashing the check for the filing fee and by placing the DEC in the drawing has no merit. Inspection of the hundreds of thousands of DEC's filed each month in the Wyoming State Office would take an inordinate amount of time, making it impossible for the office to function with any degree of efficiency. After the drawing to establish the priority of consideration for the successful DEC's, those cards drawn are then adjudicated. At that time, any card which does not satisfy the mandatory requirements of the regulations is rejected. There is no acceptance of an offer by BLM until a lease has been executed by the appropriate officer of the Government. McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973). Also, the calling out of the number one drawee's name does not constitute acceptance of the offer, nor even admission that the offer is acceptable. S. Duff Kerr, 36 IBLA 302 (1978).

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.

Douglas E. Henriques
Administrative Judge

We concur.

Edward W. Stuebing
Administrative Judge

Joan B. Thompson
Administrative Judge

