

GORDON E. JACOBER

IBLA 80-493

Decided July 22, 1980

Appeal from decision of Nevada State Office, Bureau of Land Management, disqualifying simultaneous oil and gas lease offer N-28890.

Affirmed.

1. Accounts: Payments – Oil and Gas Leases: Generally – Oil and Gas Leases:
Applications: Generally – Oil and Gas Leases: Rental – Payments: Generally

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by BLM that the rental is due within 15 days from the receipt of notice that such payment is due, the offer will be disqualified under 43 CFR 3112.4-1 when the rental is not received in the proper office within 15 days from the receipt of notice that such payment is due.

2. Accounts: Payments – Oil and Gas Leases: Generally – Oil and Gas Leases:
Applications: Generally – Oil and Gas Leases: Rental – Payments: Generally

Where payment must be accomplished within a specific number of days from receipt of notice, that number includes holidays and weekends which occur in the interim unless it is provided otherwise.

APPEARANCES: Gordon E. Jacober, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Gordon E. Jacober has appealed from a decision dated February 27, 1980, rendered by the Nevada State Office, Bureau of Land Management (BLM), rejecting his simultaneous oil and gas lease offer.

Jacobson's offer was drawn first priority in the January 1980 simultaneous oil and gas drawing for parcel No. NV-132. The offer was rejected because appellant failed to tender timely the rental amount due. BLM had specifically sought rental payment for the offer by notice dated January 31, 1980, in the amount of \$2,407. The notice was received by Jacobson on February 5, 1980, and required that payment be made within 15 days. Thus the payment was due February 20, 1980. The record reflects that at 4:17 p.m. on February 21, 1980, the rental was delivered to the Nevada State Office. However, that office was officially closed to the transaction of public business at 4 p.m., and the payment was therefore formally received as of 10 a.m. the next day, thus making the payment 2 days late. On February 27, 1980, BLM issued a decision disqualifying appellant's lease offer because of failure to submit the rental within the time allowed.

Appellant's notice of appeal states the following:

1. It was indicated to me that there was uncertainty as to whether 15 days in which to pay the advance rental, meant 15 working days or a total of 15 days.
2. Monday, February 18th was a legal holiday as well as two nonworking weekends, which according to my interpretation automatically extended the period within which the rental could be paid.
3. The advance rental payment was wired sufficiently early to arrive at the BLM office in Reno during normal business hours but because the BLM closes at 4 P.M., it was not deemed to have arrived until the following day.
4. The actual arrival time, as shown by timed receipt was only seventeen (17) minutes after closing of the BLM office.

BLM properly rejected appellant's offer. The requirement of 43 CFR 3112.4-1 is clear, and the penalty for failing to meet it is explicit: "Rental must be received in the proper office of the Bureau of Land Management within fifteen (15) days from the date of receipt of notice that payment is due. The drawee failing to submit the rental payment within the time allowed will be automatically disqualified to receive the lease * * *." This requirement is strictly enforced by the Department. Dawson v. Andrus, 612 F.2d 1280 (10th Cir. 1980); Donald E. Gordon, 41 IBLA (1979); Milton Knoll, 38 IBLA 319 (1978); Ganio San Diego, 36 IBLA 300 (1978); Charles M. Brady, 33 IBLA 375 (1978); and cases cited. Appellant's payment was not received by BLM until 4:17 p.m. on February 21, 1980. Appellant's rental was due in the BLM office on or before February 20, 1980. 43 CFR 1821.2-2(d) states in part that, "any document required or permitted to be filed under the regulations of this chapter, received in the proper office

when the office is not open to the public, shall be deemed to be filed as of the day and hour the office next opens to the public." ^{1/} This, however, is not controlling, as the result would have been the same regardless of whether the payment was late by one day or two. Accordingly, BLM properly determined that appellant was disqualified to receive the lease and rejected his offer, because his rental payment was considered properly filed at 10 a.m., on February 22, 1980, although it was due no later than close of business on February 20.

[2] With reference to appellant's argument that the 15-day time span included a holiday and two weekends (none of which fell on the due date), that fact has no significance. Had the 15th day fallen on a weekend or a holiday, or on a day when the proper BLM office was closed by reason of some emergency, the payment would be treated as timely filed if received on the next day the office was open for public business, but that was not the case in this instance. Cf. M. J. Harvey, Jr., 19 IBLA 230 (1975). Where an action must be accomplished within a specific number of days from receipt of notice, that number of days includes holidays and weekends which occur in the interim unless it is provided otherwise. See Dawson v. Andrus, supra. Only when the time prescribed for filing and serving a document is 7 days or less, are intermediate weekends, holidays, and other nonbusiness days excluded from the computation. 43 CFR 4.22(e).

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.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Joan B. Thompson
Administrative Judge

^{1/} 43 CFR 1821.2-1 (1979) fixed the hours from 10 a.m. to 4 p.m. on weekdays. This regulation has since been amended. 45 FR 20476 (Mar. 28, 1980).

