

CASSIUS C. EPPERSON ET AL.

IBLA 80-485

Decided September 30, 1980

Appeal from the exclusion of three drawing entry cards from a drawing of simultaneously-filed oil and gas lease offers conducted by the Wyoming State Office of the Bureau of Land Management.

Affirmed.

1. Evidence: Presumptions--Evidence: Sufficiency--Oil and Gas Leases: Applications: Drawings

Where oil and gas lease applicants contend that BLM wrongly excluded three of their simultaneous offers from a drawing for not paying the filing fees when in fact the fees had accompanied the offers and been deposited by BLM, but fail to provide sufficient evidence of such payments after having been afforded reasonable opportunity to do so, the duties of the BLM officials will be presumed to have been properly discharged.

APPEARANCES: Cassius C. Epperson, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Cassius C. Epperson and Francis R. Powers have appealed from the dismissal by the Wyoming State Office, Bureau of Land Management (BLM), of their protest against BLM's exclusion of three drawing entry cards from the drawing of simultaneously filed oil and gas lease offers for parcels listed as available in December 1979. The parcels for which appellants' cards were excluded were WY-1301, WY-1507, and WY-1785.

The cards were excluded by BLM for the reason that no filing fee payment accompanied their submission. Instead, a check was enclosed,

signed by Powers, which showed no money amount. The "blank" check and the three drawing entry cards (in the names of both Epperson and Powers) were returned to the offerors.

Appellants contend that each drawing entry card submitted by them was accompanied by a separate \$10 check, and that the "blank" check by Powers was included by mistake and was merely superfluous. Appellants further assert that all of their \$10 checks were negotiated by BLM, notwithstanding that the three cards were excluded from the drawing, so that BLM, in effect, took \$30 of their money and denied them the opportunity to participate in the drawing for these parcels.

In support of these contentions appellants have submitted machine copies of the front of five checks drawn by Epperson on his account, and a machine copy of a portion of his bank statement which shows those particular checks were negotiated and returned. In addition, appellants have marked on the bank statement four other \$10 transactions which they have identified as the payment of filing fees for other drawing entry cards filed during the same period.

Unfortunately, these submissions raised more questions than they answered. The machine copies of the five checks submitted bear no parcel numbers or anything to indicate they were paid to and negotiated by the Wyoming State Office. No copies of the other four checks were submitted at all. Moreover, although appellants indicated that they made nine payments of \$10 each which were accepted by BLM, the records of BLM disclose that Epperson and Powers, jointly and severally, filed eleven cards in Wyoming during that period. Thus, even were we to accept all of appellants' allegations as true, an underpayment of \$20 would still be reflected. However, this would have justified BLM in the rejection of only two of the cards, not three.

Also, no explanation was given as to why all of the payments allegedly made for this filing were drawn against Epperson's account when the "blank" check which accompanied the drawing entry cards was drawn on Powers' account.

The Wyoming State Office, BLM, has its own depository number, which is printed on the back of the checks which it deposits, along with the date and city (Cheyenne).

Therefore, by our order of July 10, 1980, appellants were afforded 20 days from receipt thereof to submit their original canceled checks evincing payment to and negotiation by Wyoming BLM of filing fees in the total amount of \$110, with such other and further explanation of the matter as they might care to offer. The Wyoming State Office, BLM, was requested to provide this Board, within 20 days

from receipt thereof, a certified written description of the accounting procedures followed in that office to reconcile the amount of filing fees accepted and deposited with the number of cards included in the monthly drawing of simultaneously filed offers, and a statement as to whether such reconciliation was attempted for the drawing at issue and whether any imbalance was disclosed.

Only BLM responded. The State Director provided a detailed description of the accounting procedures followed by his office to reconcile the amount of simultaneous filing fees accepted and deposited with the number of drawing entry cards, and declared that such a reconciliation of fees and card was made for the December 1979 drawing and that no discrepancies existed.

Appellants have not responded in any fashion to the order. The return receipt card shows that the order was received by appellant Epperson on July 12, 1980. The time for the requested submission of further evidence has long since expired.

The evidence submitted by appellants is insufficient to establish that the three drawing entry cards which were excluded were actually accompanied by the required \$10 filing fee for each. 43 CFR 3103.2.

There is a legal presumption of regularity which supports the official acts of public officers, and in the absence of clear evidence to the contrary, it will be presumed that they have properly discharged their duties. United States v. Chemical Foundation, 272 U.S. 1, 14-15 (1926); Legille v. Dan, 544 F.2d 1 (D.C. Cir. 1976); W. J. Langley, 32 IBLA 118 (1977); David F. Owen, 31 IBLA 24 (1977); A. G. Golden, 22 IBLA 261 (1975).

As appellants have failed to provide "clear evidence to the contrary," we must presume that BLM officials have properly performed their duties in this case.

Accordingly, 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

I concur:

Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

I concur that appellant has not offered sufficient information on which to base a finding that the three checks were submitted; no further inquiry is warranted thereon.

As to the "check" which was submitted, but with the amount left blank, appellant states the "check" was submitted in error and should have been disregarded. There was therefore no implied authority to complete the check by filling in the amount. See 3A C.J.S. Alteration of Instruments § 73 (1973). Without the "check" showing a sum certain, it is not a "check" within the meaning of 43 CFR 3112.2-1. Anderson, Uniform Commercial Code § 3-104:13 (1971). For these reasons, it is not necessary to discuss whether there was any duty on BLM to fill in the missing words and figures. The return of the "check" was not contested by appellant or by his co-offeror, the maker of the instrument, Francis R. Powers.

Joseph W. Goss
Administrative Judge

