

FRANK BURSUA

IBLA 80-827

Decided September 30, 1980

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease NM 35860

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rental

Under 30 U.S.C. § 188(c) (1976), the Secretary of the Interior lacks the authority to reinstate an oil and gas lease terminated by operation of law for failure to pay rental timely, where payment is not made within 20 days after the due date.

APPEARANCES: Frank Bursua, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Frank Bursua, hereinafter appellant, appeals from the July 21, 1980, decision of the New Mexico State Office, Bureau of Land Management (BLM), which denied appellant's petition for reinstatement of oil and gas lease NM 35860. The lease terminated by operation of law for failure to pay the rental on or before April 1, 1980. BLM did not receive rental due until April 28, 1980.

The lease was originally issued for a 10-year period effective April 1, 1979. On May 27, 1980, BLM sent appellant a notice of termination citing 30 U.S.C. § 188(c) and 43 CFR 3108.2-1(c).

Appellant submitted a petition for reinstatement stating that the rental check was not sent by the rental due date because he was waiting to receive a notice of rental due. When he did not receive the notice, in a letter to BLM dated April 11, 1980, appellant inquired as to the annual rental due date on two oil and gas leases, one of which was NM 35860. At the time of the inquiry, the rental was delinquent. BLM responded that the rental for NM 35860 was due on April 1, 1980. Appellant also stated that he was a disabled veteran confined to a wheelchair and needs the lease.

[1] The requirements for reinstatement are set forth in 30 U.S.C. § 188(c) (1976), which provides in part:

[W]here any lease has been or is hereafter terminated automatically by operation of law under this section for failure to pay on or before the anniversary date the full amount of rental due, but such rental was paid on or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, the Secretary may reinstate the lease if \* \* \*. [Emphasis added.]

The implementing regulation, 43 CFR 3108.2-1(c) states:

(c) Reinstatement. (1) Except as hereinafter provided, the authorized officer may reinstate a terminated lease which has been or is hereafter terminated automatically by operation of law for failure to pay on or before the anniversary date the full amount of rental due, provided that (i) such rental was paid or tendered within 20 days thereafter, and (ii) it is shown to the satisfaction of the authorized officer that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. [Emphasis added.]

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). The Secretary of the Interior is empowered to reinstate oil and gas leases which have terminated for failure to pay rental timely only where the rental is paid within 20 days and where such failure is either justifiable or not due to lack of reasonable diligence. 30 U.S.C. § 188(c) (1976). Here the reinstatement is not authorized because the late rental was not received by BLM within the 20-day period specified in statute and regulation. The rental was due on April 1, 1980, and was not received until April 28, 1980. Despite the hardship set forth by appellant, it is beyond the jurisdiction of the Department to reinstate the lease. Beatrice G. Wood, 42 IBLA 148 (1979).

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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Joseph W. Goss  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

