

ELIZABETH A. CHRISTENSEN

IBLA 81-79

Decided January 13, 1981

Appeal from the decision of the Nevada State Office, Bureau of Land Management, denying reinstatement of oil and gas lease N-13232.

Affirmed.

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

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

2. Evidence: Generally--Oil and Gas Leases: Reinstatement --Oil and Gas Leases: Termination

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark on the payment envelope will be assumed to indicate the date of mailing in the absence of evidence to the contrary. Payment due on Oct. 1, 1980, bearing a postmark date of Sept. 30, 1980, does not reflect reasonable diligence.

## 3. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Speculation as to errors in post office mail processing does not constitute such extenuating circumstances as to make untimely payment of annual rental justified.

APPEARANCES: Elizabeth A. Christensen, pro se.

## OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Elizabeth A. Christensen has appealed the decision of the Nevada State Office, Bureau of Land Management (BLM), dated October 16, 1980, denying her petition for reinstatement of oil and gas lease N-13232. The lease terminated by operation of law when appellant's annual rental was not received by BLM on or before the anniversary date of the lease, October 1, 1980. BLM denied appellant's petition for reinstatement because appellant had not adequately justified her failure to pay timely or shown by sufficient evidence that failure to pay was not due to a lack of reasonable diligence.

Appellant asserts that she mailed her payment in a mailbox in front of a post office in Long Beach, California, on Sunday, September 28, 1980. The envelope containing the payment was postmarked September 30, 1980, however, and received by BLM in Reno, Nevada, on October 3, 1980. With her statement of reasons, appellant also enclosed a copy of her rental payment check which was dated September 28, 1980, and a letter from the Acting Director of Customer Services for the Long Beach Post Office. The letter states that since the post office "processes millions of pieces of mail daily, mail processing errors are unavoidable and it is possible that an error occurred in the processing of [appellant's] letter." Appellant urges that she has always been on time with her rental payment in the past and was not lacking in diligence on this occasion.

[1] Failure to pay the annual rental for an oil and gas lease on or before the anniversary date of the lease results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). The Secretary of the Interior may reinstate oil and gas leases which have terminated for failure to pay rental timely only where the rental is paid within 20 days and upon proof that such failure was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1976). In the absence of such proof, a petition for

reinstatement is properly denied. See, e.g., Alice M. Conte, 46 IBLA 312 (1980); J.R. Oil Corp., 36 IBLA 81 (1978); Lone Star Producing Co., 28 IBLA 132 (1976).

[2] The showing of reasonable diligence necessary for reinstatement ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). The postmark date on the envelope containing a rental payment is considered the date of mailing in the absence of evidence to the contrary. Joseph W. Semien, 41 IBLA 185 (1979). Appellant has presented no firm evidence corroborating her assertion that she mailed the payment on September 28, 1980, and therefore the Board must presume that appellant's payment was mailed on September 30, 1980, the date of postmark. Under the regulation, reasonable diligence has not been exercised when a rental payment was mailed only one day before it was due.

[3] Untimely payment of the annual rental may be justifiable for purposes of reinstatement if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Harold W. Fullerton, 46 IBLA 116 (1980); Hubert W. Scudder, 35 IBLA 58 (1978); Lloyd M. and Adelheid A. Patterson, 34 IBLA 68 (1978). Speculation as to error by the post office in processing appellant's payment does not constitute extenuating circumstances such as to make untimely payment justifiable. Appellant must bear the consequences of the untimeliness of her chosen means of delivery of her rental payment. Amanda Mining & Manufacturing Assoc., 42 IBLA 144, 146 (1980).

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

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Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Gail M. Frazier  
Administrative Judge

