

DOROTHY C. AXELSON

IBLA 79-269

Decided January 16, 1981

Appeal from decision of Wyoming State Office, Bureau of Land Management, denying reinstatement of oil and gas lease W 56878.

Affirmed.

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

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not received by the Bureau of Land Management State Office on or before the anniversary date.

2. Oil and Gas Leases: Reinstatement

A terminated oil and gas lease may be reinstated only if the failure to make timely payment was either justifiable, i.e., due to events outside the lessee's control, or not due to a lack of reasonable diligence. Reasonable diligence generally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing rental payment 12 days after it was due does not constitute reasonable diligence.

Absence from the country on a business trip at the time payment is due on a lease does not justify late payment of the rental. Early payment or other arrangements could be made to ensure timely payment.

APPEARANCES: Dorothy C. Axelson, pro se.

## OPINION BY ACTING ADMINISTRATIVE JUDGE HARRIS

Dorothy C. Axelson has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), denying reinstatement of oil and gas lease W 56878, which terminated by operation of law pursuant to 30 U.S.C. § 188(b) (1976). Payment of the annual rental was due on December 1, 1978, the anniversary date of the lease. Payment was not received until December 18, 1978, arriving in an envelope bearing a December 12, 1978, postmark.

[1, 2] An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not received by the BLM State Office on or before the anniversary date. 30 U.S.C. § 188(b) (1976). A terminated oil and gas lease may be reinstated only if the failure to make timely payment was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1976). Late payment is justifiable if it is attributable to causes beyond the lessee's control. See James E. Kordosky and Robert A. Weiss, 43 IBLA 63 (1979). Reasonable diligence generally requires sending or delivering payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2). Mailing payment 12 days after it was due does not constitute reasonable diligence. See Saxe, Bacon and Bolan, P.C., 40 IBLA 5 (1979); Apostolos Paliombeis, 30 IBLA 153 (1977).

Appellant asserts that the death of her husband, the named lessee, and the absence of her son at the time the annual rental was due, justifies the late payment. The basis for this contention is that appellant's son took over her financial affairs after the death of her husband. <sup>1/</sup> The absence of appellant's son from the country on a business trip at the time payment was due does not provide a justification for late payment. See J.R. Oil Corp., 36 IBLA 81 (1978). The son could have made early payment or could have made other arrangements to ensure timely payment. See Lloyd M. Patterson, 34 IBLA 68 (1978). The State Office correctly denied reinstatement.

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<sup>1/</sup> Death of the lessee or a member of the family in close proximity to the anniversary date of the lease is a justifiable reason for late payment. Fredres E. Laubaugh, 24 IBLA 306 (1976). However, the death of appellant's husband in February of 1977 cannot be considered a causative factor in the late payment of rental due on or before December 1, 1978, especially when rental was timely paid on November 30, 1977.

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.

Bruce R. Harris

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Acting Administrative Judge

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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James L. Burski  
Administrative Judge

