

RALPH W. M. KEATING

IBLA 80-686

Decided June 3, 1981

Appeal from the decision of the California State Office, Bureau of Land Management, denying reinstatement of oil and gas lease S 021009(a).

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

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Transmittal of payment 14 days after the due date does not constitute 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. No justifiable excuse arises where a

lessee has been specifically notified of the due date and through inadvertence fails timely to make payment.

APPEARANCES: Ralph W. M. Keating, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE BURSKI

Ralph W. M. Keating has appealed the decision of the California State Office, Bureau of Land Management (BLM), dated April 29, 1980, denying the petition for reinstatement of oil and gas lease S 021009(a) submitted on behalf of Pardee Petroleum Corporation, one of the lessees.

Oil and gas lease S 021009(a) was originally issued to John Keating for a 20-year term effective November 8, 1938. John Keating's interest in the lease transferred in 1954, after his death, to appellant. As a result of various assignments of the lease, the last leaseholders of record are Pardee Petroleum Corporation (Pardee) and Energy Dynamics, Inc. Appellant retains a 5 percent royalty interest in the lease. The lease has been renewed for three successive 10-year terms following the original term, the last renewal effective on November 1, 1978.

By decision dated November 7, 1979, BLM notified the lessees that the lease had terminated automatically by operation of law on November 1, 1979, for failure to pay rental due on that date, unless evidence that the rental was timely paid could be furnished. In addition, BLM outlined the requirements for reinstatement where late payment is made. Counsel for Pardee submitted a rental payment on November 15, 1979, with no further explanation. After BLM declared the lease terminated on November 21, 1979, counsel then submitted a petition for reinstatement. BLM found that the reasons offered for the late payment did not support a finding that such payment was justifiable or not due to a lack of reasonable diligence as required by Departmental regulations at 43 CFR 3108.2-1.

In his statement of reasons, appellant urges that the failure to pay timely the rental was justifiable because it was the result of a misunderstanding on the part of Pardee and prompt payment was made as soon as the need for payment was known. He explains that he timely paid the rental due on November 1, 1977, and counsel for Pardee also tendered payment for the same rental year but not until November 8, 1977. The second payment was credited towards rental due on November 1, 1978, rather than being returned as an overpayment. Thus, appellant argues, counsel for Pardee had reason to assume that late payment was acceptable. He urges that since the payment was actually made the penalty for lateness should be an extra interest or finance charge, not termination of the lease.

[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 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). Under the circumstances of this case we must find a lack of due diligence since the full amount of the annual rental was not transmitted until 14 days after the due date.

[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). We do not find that such extenuating circumstances exist. As BLM indicated in its decision, the lessees had actual notice that the rental was due on November 1, 1979, so that any confusion which may have occurred as a result of the 1977 payments should have been cleared up. The decision renewing lease S 021009(a) for another 10-year term issued by BLM on June 28, 1979, states, "[B]ecause there has been a delay in renewing the lease, it is called to the lessee's attention that the next rental payment (\$160) is due on or before November 1, 1979" (emphasis in original). In addition, BLM issued a routine notice of payment due for November 1, 1979, to Pardee. As BLM noted, this appears to be a case of simple inadvertence which is not a sufficient justification for late payment to warrant reinstatement.

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.

James L. Burski  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

Edward W. Stuebing  
Administrative Judge

