

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, denying a petition for reinstatement of oil and gas lease. NM 30882.

Affirmed.

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

A petition for reinstatement of an oil and gas lease which has expired by operation of law for failure to make timely payment of the annual rental will be denied where the petition is filed with the appropriate office more than 15 days after receipt of notification of termination of the lease.

2. Oil and Gas Leases: Reinstatement

Absence from the country 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: Michael Morrisroe, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Michael Morrisroe, Jr., appeals from the October 15, 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 30882 because the petition "was not timely filed within the 15 days allowed." The lease terminated by operation of law for failure to pay the annual rental on or before its anniversary date of August 1, 1980. Payment was not received by BLM until August 20, 1980.

The lease was originally issued for a 10-year period effective August 1, 1977. On September 16, 1980, BLM sent appellant a notice of termination citing 30 U.S.C. § 188 (1976) and 43 CFR 3108.2-1(c).

Appellant submitted a petition for reinstatement, received by BLM October 10, 1980, stating that he had been out of the country on business, and that his mail was being forwarded to him. In its October 15, 1980, decision BLM denied this petition.

On appeal, appellant states that his address had changed; that he had not received his mail; that he had been overseas at the time of renewal; that his payment was "only twenty days late"; and that his petition was "only a few days late."

[1] The requirements for reinstatement of a terminated lease are set forth in 43 CFR 3108.2-1(c). That regulation requires that: (1) the rental due be paid or tendered within 20 days of the anniversary date of the lease; (2) it be shown that the untimely payment was either justifiable or not due to a lack of reasonable diligence on the part of the lessee; and (3) a petition for reinstatement of the lease be filed with BLM within 15 days after receipt of notice of termination of lease due to late payment of rental.

Appellant's argument that he had not received his mail because of an address change does not excuse him from compliance with the above cited regulation. A person will be deemed to have received a communication if it is delivered to his last address of record with the appropriate BLM office, regardless of whether it was in fact received by him. 43 CFR 1810.2; see Robert D. Nininger, 16 IBLA 200 (1974), aff'd, Nininger v. Morton, Civ. No. 74-1246 (D.D.C. Mar. 25, 1975).

In this case, however, the record discloses that the envelope which contained appellant's rental check also contained the BLM "Notice of Payment Due" which had been sent to appellant's last address of record. On that notice was written "Please: address change." Appellant's street address and zip code were lined out and a new street address and zip code were written. The termination notice, dated September 16, 1980, was sent to appellant's new address and the return receipt card shows that it was signed for by one Mary Duncan on September 19, 1980.

When payment of the annual rental is not received on or before the anniversary date, the lease terminates automatically, by operation of law. A lease so terminated may be reinstated only if the terms and conditions of the statute and pertinent regulations have been satisfied. The notice of termination was received at appellant's last address of record on September 19, 1980. Therefore, appellant's petition for reinstatement must have been received by BLM no later than Monday, October 6, 1980. Appellant's petition for reinstatement was postmarked October 7,

1980, and received by BLM on October 10, 1980. The Secretary and authorized representatives have no authority to reinstate a terminated lease unless all terms of pertinent regulations are met. See John J. Nordhoff, 24 IBLA 73 (1976). The petition for reinstatement was properly denied.

[2] Even if appellant's petition could be considered on its merits, it would be denied. His statement that he was overseas at the time payment was due does not justify late payment of the rental. He could have made arrangements to ensure timely payment. See Dorothy C. Axelson, 52 IBLA 146 (1981).

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  
Administrative Judge

We concur:

---

Gail M. Frazier  
Administrative Judge

---

Anne Poindexter Lewis  
Administrative Judge