

CAROL DOLEZAL

IBLA 81-315

Decided July 8, 1981

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting simultaneously filed oil and gas lease offer NM 39159.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Generally

Where an oil and gas lease offeror is directed to "return" rather than "file" a document within a prescribed period of time, where the offeror deposits the document in the mail before the end of the specified period, and where the document is received within a reasonable period of time later, BLM may not properly reject the offer.

APPEARANCES: James S. Holmberg, Esq., Denver, Colorado, for appellant; Gayle E. Manges, Esq., Field Solicitor, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Carol Dolezal has appealed from the November 6, 1980, decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting her simultaneously filed oil and gas lease offer NM 39159. Her offer was drawn with first priority for parcel No. NM-163 on November 14, 1979. While her offer was pending, the Department suspended noncompetitive oil and gas leasing. Secretarial Order No. 3049 (Feb. 29, 1980). When the suspension was lifted by Secretarial Order No. 3051 (Apr. 7, 1980), the Secretary directed that applicants whose applications were pending be required to file a signed certificate that no false statements had been made in the applications concerning parties in interest. In implementation of this directive, BLM issued Instruction Memorandum No. 80-492, which was accompanied by copies of the certifications to be mailed to those who had pending oil and gas lease applications. The

forms indicated that failure to sign and return the certification within 30 days of its receipt by the applicant would result in rejection of the application. Appellant received her copy of the form on June 18, 1980. Although she mailed her executed copy of the certificate on July 18, it was not received by BLM until July 21. BLM rejected her application because the required certificate was not received by July 18, 1980.

[1] Appellant argues that she complied with the requirement in the notice that the certification be "returned" within 30 days because she mailed it on the 30th day. Although appellant recognizes that a document is not considered "filed" until it is delivered, 43 CFR 1821.2-2(f), she contends that the use of the word "returned" signifies that the certification need only be mailed, not received, by the required time. The Solicitor argues that there is no such distinction, contending that it was appellant's responsibility to make the certification available to the State Office within 30 days in order to adjudicate her qualifications. BLM should not be required to wait an indefinite period of time in order to determine whether the offeror failed to qualify.

In previous cases, we have held that where an oil and gas lease offeror is directed to provide within a prescribed period of time specific information necessary to determine whether her offer is valid and BLM has not received the information at the end of the specified period, BLM should reject the offer and consider the application having next priority. See Lorenz K. Ayers, 50 IBLA 240 (1980); Lee S. Bielski, 39 IBLA 211, 221, 86 I.D. 80, 85 (1979).

In a recent decision involving the same certification form as the one involved in the instant appeal, the Board cited the regulation dealing with filings, 43 CFR 1821.2-2(f), as authority for rejecting an offer where the offeror had failed to return the certificate before the BLM issued its decision. Ken Wiley, 54 IBLA 367, 370 (1980). Similarly, the Board has cited the regulations governing filings as authority for rejecting oil and gas lease offers where stipulations were not timely "returned." E.g., Arthur Ancowitz, 53 IBLA 69 (1981); J. Thomas Lewis, 50 IBLA 350 (1980). In those cases, however, the appellants did not mail the documents which were required to be submitted before the close of the period established for submission by BLM. Thus, we were not called upon to decide whether BLM's use of the word "return" would impel a different result in a case where the document was mailed within that period and received on the next business day.

This case is readily distinguished from the others cited. In this case we must determine whether there was any ambiguity created by BLM's use of the word "return" without more specific indication that the documents had to actually be received by BLM by the end of the time period in question. The divergence of views taken by the authorities cited by appellant and the Solicitor sufficiently establish

that the word "return" by itself lacks the necessary clarity to inform appellant that her certification had to be actually received by BLM at the close of the time period set forth in the notice, and that mailing would not be sufficient. Furthermore, BLM's use of the word "return" precludes the application of BLM's regulations governing filings, 43 CFR 1821.2-2, in resolving this ambiguity. This appeal, then, is to be decided on the basis of one simple issue: whether the ambiguity created by the use of the word "return" is to be resolved against appellant. The answer to this question is clear: appellant prevails. See Mary I. Arata, 4 IBLA 201, 78 I.D. 397 (1971). Accordingly, we hold that BLM's requirement that appellant return the certificate within 30 days was satisfied by her mailing it within that period and by receipt of the certificate within a reasonable time after mailing. Because appellant has prevailed on this issue, we need not discuss the other issues raised by her statement of reasons.

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 reversed and the case remanded for further action consistent with this opinion.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge