

RUSSELL D. BROWN

IBLA 81-532

Decided August 3, 1981

Appeal from the decision of the Utah State Office, Bureau of Land Management, denying a petition for reinstatement of oil and gas lease, U-38529.

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 the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

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

Untimely payment of 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.

3. 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. The postmark date of a rental

payment is generally considered the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at an earlier date. Mailing the rental payment 1 day after the anniversary date of the lease does not constitute reasonable diligence.

APPEARANCES: Russell D. Brown, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Russell D. Brown has appealed a decision of the Utah State Office, Bureau of Land Management (BLM), denying his petition for reinstatement of oil and gas lease U-38529.

BLM issued the oil and gas lease in question effective December 1, 1977, to Franklin J. Bradshaw for a period of 10 years. Sometime between the issuance of the lease and March 1979, Bradshaw died. On March 8, 1979, BLM recognized the Walker Bank & Trust Company (Walker) as executor of the Bradshaw estate. Walker assigned the lease to Russell D. Brown on August 13, 1980. That assignment was never approved by BLM because Brown never submitted his qualifications as the assignee to take and hold the lease. <sup>1/</sup>

The annual rental for this lease was not paid on or before December 1, 1980, its anniversary date. Accordingly, on December 5, 1980, BLM notified Brown that the lease had automatically terminated by operation of law. BLM also returned the tardy rental payment to Brown on December 5, 1980. Brown had tendered the rental on December 4, 1980, 3 days after the anniversary date of the lease.

Brown filed a petition for reinstatement of the lease on December 23, 1980. In this petition, Brown states that when he returned from an extensive business trip on November 28, 1980, Walker informed him "that the rental had not been paid, even though the lease was still in the name of the F. J. Bradshaw estate because the assignment had not been executed." Brown says that he mailed the rental on November 29, 1980, the next day. However, the envelope containing the payment was postmarked December 2, 1980, 3 days after Brown

---

<sup>1/</sup> BLM indicated in its decision that although the assignment was unapproved, that fact had no bearing on its decision in this case. We note that Brown has adequate standing to prosecute this appeal, based on the apparent interest which he acquired from Walker, even though BLM has not officially approved the assignment. See Haruyuki Yamane, 19 IBLA 320 (1975).

allegedly mailed it, and 1 day after it was due. Brown says that he discussed the matter with his local postmaster, after he learned from Robert Lopez, Chief, Branch of Records and Data for BLM, that the envelope was postmarked a day after the anniversary date of the lease, and that "[t]he postmaster said it could have been the influx of the Christmas mail that delayed processing, but that he could not be sure."

BLM denied the petition for reinstatement in its decision dated February 9, 1981, holding that since the payment was not sent until after the due date, Brown had not demonstrated reasonable diligence in this case. BLM further held that "Brown's justification that according to the postmaster 'it could have been the influx of the Christmas mail that delayed processing' does not meet the burden of proving that late payment was justifiable." Brown filed a timely notice of appeal.

[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 or tendered 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. Margaret Lee Pirtle, 54 IBLA 113 (1981), and cases cited.

[2] Untimely payment of the annual rental may be justifiable for purposes of reinstatement if proximately caused by extenuating circumstances outside the lessee's control that occurred at or near the anniversary date of the lease. Ralph M. Keating, 55 IBLA 113 (1981); Harold W. Fullerton, 46 IBLA 116 (1980); Herbert W. Scudder, 35 IBLA 58 (1978); Lloyd M. Patterson, 34 IBLA 68 (1978). Generally, this standard contemplates occurrences such as injury (David Kirkland, 19 IBLA 305 (1975)), illness (Billy Wright, 29 IBLA 81 (1977)), or death (Fredres E. Laubaugh, 24 IBLA 306 (1976)).

Here, appellant, who was out of town on a business trip, relied on Walker, the trustee, to pay the annual rental, perhaps because he was aware that the assignment of the lease had not been approved by BLM and that record title to the lease was still in the name of the F. J. Bradshaw Estate and was therefore still under its stewardship. Presumably, Walker, operating under the belief that it had effectively assigned the lease to appellant, assumed that he, as assignee, would pay the annual rental. Other than his absence from home prior to the due date of the annual rental, appellant has offered no proof of circumstances which might justify his and Walker's confusion. The Board has previously held that absence from the locale does not rise to the level of justification for untimely payment of the annual rental

(Martin Mattler, *supra*), and that traveling away from home during the time prior to the due date for annual rental will not justify late payment. Melvin D. Guttman, 51 IBLA 53 (1980); Harry Zaslow, 46 IBLA 217 (1980), and cases cited. Nor does Walker's and appellant's apparent confusion as to who had the responsibility to pay the rental justify the failure to do so. No justifiable excuse arises where an assignee of the lease relies on the assignor to make payment. Alice M. Conte, 46 IBLA 312 (1980), and cases cited.

[3] 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). Although appellant asserts that he made the payment on November 29, 1980, the postmark on the envelope is December 2, 1980.

The Board has held that the postmark date of a rental payment is generally considered the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at a date earlier than that indicated by the postmark. Margaret Lee Pirtle, *supra*; Kenneth W. Macek, 49 IBLA 153 (1980); Daniel Ashley Jenks, 36 IBLA 268 (1978); David R. Smith, 33 IBLA 63 (1977). One type of satisfactory evidence is a statement by a postal official explaining the possibility of a delay in processing mail from a particular location on the day that it is asserted mail was deposited there. Margaret Lee Pirtle, *supra*.

Appellant's allegation that the local postmaster explained that the influx of Christmas mail had possibly delayed handling of appellant's letter containing the annual rental falls short of what is required to corroborate his allegation that the rental was mailed earlier than the postmark date. First, it is not a firsthand statement by the postmaster himself. Second, it is equivocal, stating only that the influx of Christmas mail had possibly delayed handling of his rental payment. It seems very unlikely that a letter would remain in handling for 3 days between mailing and postmarking. In the absence of a firsthand statement by a postal official stating unequivocally that handling had been delayed by the Postal Service, or any other evidence to show that the payment was mailed on November 29, 1980, BLM correctly regarded the postmark date as the mailing date. Margaret Lee Pirtle, *supra*. There can be no showing of reasonable diligence where, as here, the rental payment is not mailed until after the date it is due to be received in BLM. William A. Klua, 43 IBLA 255 (1979).

The elements essential to a valid petition for reinstatement are proof that failure to pay annual rental timely was either justifiable or not due to a lack of reasonable diligence. Since these elements are not present in appellant's petition, BLM correctly denied it.

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.

---

Bernard V. Parrette  
Chief Administrative Judge

We concur:

---

Edward W. Stuebing  
Administrative Judge

---

James L. Burski  
Administrative Judge

