

Editor's note: Reconsideration denied by order dated Sept. 17, 1982

ARNOLD L. GILBERG

IBLA 81-711

Decided August 17, 1981

Appeal from the decision of the California State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas leases S 5488 and S 5509.

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

Reasonable diligence 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. The postmark on the payment envelope will be assumed to indicate the date of mailing in the absence of evidence to the contrary. Payment due on Jan. 2, 1981, bearing a postmark date of the same day does not reflect 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. Neither ignorance of the law nor a business or pleasure trip justifies late payment. Furthermore, where lessee presents no evidence to support a finding that the illness of an employee entrusted with making payment occurred at or near the anniversary date and with such causality to constitute sufficiently extenuating circumstances to justify late payment, lessee's petition for reinstatement must be denied.

APPEARANCES: Arnold L. Gilberg, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Arnold L. Gilberg has appealed the decision of the California State Office, Bureau of Land Management (BLM), dated May 22, 1981, denying his petition for reinstatement of oil and gas leases S 5488 and S 5509 because appellant had not adequately justified his failure to pay timely or show by sufficient evidence that the failure to pay was not due to a lack of reasonable diligence.

The leases terminated by operation of law when appellant's annual rentals were not received by BLM on or before January 2, 1981, the first working day following the anniversary date of the leases, January 1, 1981. BLM received the rental payments postmarked January 2, 1981, on January 5, 1981. In response to BLM's termination notice, appellant indicated that "[t]he check was mailed as soon as I arrived in the United States. I was under the impression that I had a 20-day grace period. Please re-instate."

On April 23, 1981, BLM received a notarized letter from appellant's secretary explaining that appellant signed the rental check on December 16, 1980, before leaving on a trip to Mexico on December 18, 1980, and directed that she mail it. She states that she became ill and was unable to work but finally mailed the payments on December 31, 1980. 1/

In his statement of reasons on appeal to this Board, appellant reiterates the information provided in his secretary's letter and

1/ The letter from appellant's secretary was properly not considered by BLM as part of his petition for reinstatement as the petition must have been received within 15 days after receipt of the notices of termination of the leases. Joseph S. Calabrese, 25 IBLA 241 (1976); 43 CFR 3108.2-1(c).

asserts that he has shown due diligence in attempting to make timely payment. He claims that January 5, 1981, was the first work day after January 1 as Friday, January 2, 1981, was part of the long New Year's weekend. He asserts that he was never advised that his secretary had a right to reinstate within a 20-day period and that he is "inexperienced in federal codes." He suggests that allowance should be made for human frailty since the rental payments were received "as quickly as possible" and before the termination notices were sent.

[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 the 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). The postmark date on the envelope containing a rental payment is considered the date of mailing in the absence of evidence to the contrary. Joseph W. Semien, 41 IBLA 185 (1979). Appellant asserts that the payment was actually mailed on December 31, 1981, even though the postmark date is January 2, 1981, but has presented no convincing evidence substantiating that assertion. Appellant's rental payment was due on January 1, 1981, but since Federal offices were closed on that day, appellant had until the next regular business day to submit his payments. Federal Government offices were open for business on January 2, 1981. Under the regulation reasonable diligence has not been exercised when a rental payment bears a postmark showing the same date as it was due. Kenneth W. Macek, 49 IBLA 153 (1980).

[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); Albert R. Fairfield, 34 IBLA 132 (1978); Lloyd M. Patterson, 34 IBLA 68 (1978).

In his initial explanation for late payment, appellant claimed that the check was mailed as soon as he returned to the United States because he thought he had a 20-day grace period. On appeal, he states that he made out the rental payment check on December 16 before leaving

on a trip to Mexico and entrusted mailing of the payment to his secretary. She became ill and did not mail the payment until December 31, 1980.

This Board has held on numerous occasions that a business or pleasure trip does not constitute a circumstance ordinarily beyond an individual's control and does not ordinarily prevent a diligent individual from making payment or arranging for others to make payment in his or her absence. Michael Morrisroe, Jr., 56 IBLA 49 (1981); Melvin D. Guttman, 51 IBLA 53 (1980); Lloyd M. Patterson, *supra*; Sara Turcsan, 23 IBLA 370 (1976). Appellant has not explained why he did not mail the payment before he left on his trip since these leases were personal to him and presumably unrelated to his regular business. ^{2/} Nevertheless since appellant did entrust the task of mailing the payment to his secretary, we will examine the circumstances surrounding the secretary's failure to mail the payment timely. Such circumstances have been found to justify late payment if the employee was so incapacitated as not to be reasonably able to attend to normal business matters. David Kirkland, 19 IBLA 305 (1975). *Contra* Leonard Lundgren, 53 IBLA 149 (1981). However, inadvertance or negligence of an employee is not a sufficient excuse to justify late payment. Ramoco, Inc. v. Andrus, 649 F.2d 814 (10th Cir. 1981).

Appellant's intitial explanation for his late payment is clearly not sufficient to justify reinstatement, as appellant's professed lack of knowledge as to the requirements does not support reinstatement. All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); 44 U.S.C. §§ 1507, 1510 (1976). In addition, we note that in circumstances very similar to those now presented to us, appellant's same leases terminated for failure to submit timely the annual rental on January 2, 1974. BLM reinstated the leases at that time because the secretary responsible for making the payment was hospitalized after appellant left town for the holidays and the secretary apparently remained hospitalized until sometime after the leases' renewal date.

In contrast to the 1974 situation, appellant's explanation herein provides no information to support a finding that appellant's secretary's illness occurred with such proximity in time to the anniversary date and with such causality to constitute sufficiently extenuating circumstances as to justify the failure to make timely payment. Earl Chancellor, 24 IBLA 121 (1976). The checks were executed on December 16, 1980, more than 2 weeks before the due date. Appellant did not leave for Mexico until December 18, 1980. The nature and duration of the secretary's illness has not been disclosed. Appellant's petition for reinstatement is properly denied.

^{2/} Appellant is a psychiatrist.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the California State Office is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

