

SHELL OIL CO.

IBLA 81-743

Decided August 17, 1981

Appeal from the decision of the Colorado State Office, Bureau of Land Management, declaring oil and gas lease C-19455 terminated by operation of law.

Affirmed.

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

An oil and gas lease is properly declared to have terminated automatically for nonpayment of rental because, although the lessee claims to have mailed timely the rental together with another payment which was received, the rental check cannot be found.

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

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

APPEARANCES: Randolph D. Hurt, Esq., Houston, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Shell Oil Company has appealed the decision of the Colorado State Office, Bureau of Land Management (BLM), dated April 28, 1981, declaring oil and gas lease C-19455 to have terminated automatically on December 1, 1980, by operation of law, for nonpayment of the annual rental on or before the anniversary date of the lease.

In response to the BLM decision Shell submitted a petition for reinstatement of the lease urging that the rental had been paid or tendered prior to the anniversary date of the lease but apparently lost after reaching BLM. In support of its contention, Shell enclosed an affidavit of a Shell employee describing its procedures for paying lease rentals, copies of related control documents, and a replacement check for the rental payment.

The affidavit executed by Shell's Section Supervisor, Leasehold Systems Control Section, describes Shell's standard procedure for paying lease rentals as follows:

[I]t is Shell's normal procedure, whenever possible, to await receipt from the BLM of its Notice of Payment Due (Form 1371-16 (July 1972)), in duplicate (one marked "Customer's Copy" and one marked "Return With Payment"). When this Notice is received by Shell, the copy marked "Return With Payment" is matched with Shell's rental check applicable to the same lease identified in the Notice, all rental checks with the applicable Notice pertaining to leases having rentals due to the same BLM office on the same date are put into a single envelope addressed to the appropriate BLM office and marked, Certified Mail Return Receipt Requested, and the check numbers and the Shell lease file numbers applicable to the leases for which rental checks are included in the envelope are typed on the Certified Mail Return card for easy identification when the card is returned. The envelope is then hand carried to Shell's Mail Room in its Western Exploration & Production offices in Houston, Texas. Mail Room personnel see that the envelope has sufficient postage and place the envelope in the U.S. mail.

Each Shell rental check pertains to a single USA oil and gas lease and is machine printed on a three part form \* \* \*. The first part is the Rental Check itself with stub on which the pertinent lease is identified and the period of time for which the payment is tendered is noted. The second part is the Rental Receipt. \* \* \* The third part is the Land Department Control Copy.

At the time the Rental Check is mailed the fact of mailing the check by Certified Mail is noted on the corresponding Land Department Control Copy along with a cross-reference on each Land Department Control Copy to each other Rental Check mailed in the same envelope.

In addition, she reconstructed the events surrounding the payment for lease C-19455 by reference to Shell's records as follows.

With respect to the payment of the rental due on or before December 1, 1980, as to USA Lease Serial No. C-19455, our records show that we followed our normal procedure in every detail. In this instance we mailed to the Denver office of BLM in a single envelope two rental checks, one for C-19455 (being Shell Check No. K12196) and the other for lease C-19456 (being Shell Check No. K12195). Our three-part Rental Check forms for these two payments were machine printed about, and dated, October 1, 1980. By the end of October 1980 we had received from BLM the Notice of Payment Due December 1, 1980, for each of these leases \* \* \* .

On October 31, 1980, we detached the Rental Receipt \* \* \* and Land Department Control Copy \* \* \* of each three-part Rental Check form from the two Rental Checks (K12196 K12195), placed in a single envelope Rental Check K12195 and Rental Check K12196 along with the copy of each Notice of Payment Due form required to be returned to BLM with each payment. At the same time we noted on the Land Department Control Copy \* \* \* the fact, and date, of mailing of the envelope by Certified Mail, cross-referenced each Land Department Control Copy to the other Rental Check mailed in the same envelope, and typed on the Certified Return card the two check numbers and our respective file numbers, being CO-8603 and CO-8687. The envelope containing the two checks, the two Notice of Payment Due forms and the Certified Mail Return Receipt card were hand-carried to Shell's Mail Room for mailing. The Rental Receipt and Land Department Control Copy for each check were clipped together and held in our call-up file awaiting receipt of evidence from BLM of the rental payments.

In early November 1980 the Certified Mail Return Receipt card No. 40830 \* \* \* was received in our offices in Houston. It shows that the envelope containing checks No. K12195 and K12196 was received by BLM (by E. Zeimerman on November 3, 1980). Later in November 1980 we received from BLM its Receipt for Payment form \* \* \* for lease C-19456 showing receipt by BLM on November 3, 1980, of the rental payment due on or before December 1, 1980, for that lease. The fact that a similar receipt for lease C-19455 was not received at the same time was not particularly disturbing to us because experience has shown that Receipt for Payment forms are not necessarily mailed by BLM in the order of date of receipt of the payment.

The affidavit also reports that when inquiry was first made in March 1981 as to whether BLM had received the payment, a BLM employee confirmed receipt but then subsequently reported that the rental had not been paid.

On June 3, 1981, Shell, having received no response from BLM to its petition for reinstatement, filed a notice of appeal from the termination decision. To support its statement of reasons, Shell has submitted the petition for reconsideration with its supporting documents and a second affidavit executed by another Shell employee reconfirming the information in the first affidavit. Shell asserts that because of the thousands of rental payments made by Shell each month, it is not possible for its employees to remember that a given rental check was in fact inserted into a particular envelope. Shell argues, nevertheless, that records are maintained "as to the completion of each significant step in the process of paying rentals and those records constitute the proof of payment when a rental receipt is not, for any reason, obtained." Shell concludes that it is not inconceivable that the check was misplaced after receipt in the Colorado State Office and urges that the Board follow BLM's decision in Charles J. Babington, BLM 052275 (Nov. 5, 1968), <sup>1/</sup> wherein, in similar circumstances, the BLM Office of Appeals and Hearings held that it was error for the land office to have terminated a lease.

[1] The Mineral Leasing Act provides that, upon failure of a lessee to pay rental on or before the anniversary date of an oil and gas lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall terminate by operation of law. 30 U.S.C. § 188(b) (1976). The question first presented to us is whether Shell's lease did terminate by operation of law on December 1, 1980. We have previously held that an uncorroborated statement that a missing document was sent with a document which was received is insufficient to rebut the legal presumption that administrative officials have properly discharged their duties and have not misplaced or lost the document in issue. Charles J. Babington, 36 IBLA 107 (1978); David F. Owen, 31 IBLA 24 (1977).

Here, although Shell has established that its normal procedures for payment of oil and gas lease rentals were followed with respect to the issuance of a rental payment check for lease C-19455, there is no direct evidence showing that the check was in fact put in the envelope received by BLM. The check could just as easily not have been put in the envelope for mailing as have been misplaced by BLM. An oil and gas lease is properly declared to have terminated automatically for nonpayment of rental where, although the lessee claims to have mailed the rental together with another payment which was received, the rental cannot be found. Jack J. Grynberg, 53 IBLA 165 (1981); Joan Witmer, A-30986 (Mar. 3, 1969).

---

<sup>1/</sup> Decisions of the now defunct Office of Appeals and Hearings, BLM, have no value or effect as precedent, as they were not included in a periodic index, as required by 5 U.S.C. § 552 (1976), nor did such decisions constitute final Department action which exhausted the administrative remedy. Cheyenne Resources, Inc., 46 IBLA 277, 87 I.D. 110 (1980).

There is a critical distinction between the Babington case cited by Shell and the situation now before us. In Babington, the land office apparently admitted to the possibility that it lost the rental check. Here, however, there is no such admission. The lease file reflects that the BLM accounts section made an exhaustive search of its deposit records for the missing payment. In addition the BLM land law examiner reviewed the BLM system from receipt of its mail to issuance of a receipt and did not discover any explanation for the missing payment other than it not being mailed.

[2] With respect to Shell's petition for reinstatement, we note that this Department has no authority under the Mineral Leasing Act to reinstate an oil and gas lease which has terminated by operation of law unless payment is received within 20 days after the date of termination. 30 U.S.C. § 188(c) (1976); Jack J. Grynberg, supra. BLM did not receive Shell's replacement check until May 18, 1981, more than 6 months after the anniversary date.

Accordingly, 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 Colorado State Office is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Gail M. Frazier  
Administrative Judge

