

ANDREW H. NELSON

IBLA 81-562

Decided September 30, 1981

Appeal from decision of the Nevada State Office, Bureau of Land Management, denying the petition for reinstatement of noncompetitive oil and gas lease N-27332.

Affirmed.

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

The postmark date of a rental payment for an oil and gas lease is generally deemed to be 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 indicated by the postmark.

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

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2).

3. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals

Reasonable diligence requires mailing the rental payment sufficiently in advance of

the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in New Jersey, 2 days before it is due in Reno, Nevada, does not constitute reasonable diligence.

APPEARANCES: Christopher J. Nickos, Esq., Lanoka Harbor, New Jersey, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Andrew H. Nelson appeals from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated March 17, 1981, denying reinstatement of oil and gas lease N-27332 and holding that lease to have terminated. The lease terminated automatically by operation of law when appellant failed to pay the annual rental on or before the anniversary date of the lease.

The anniversary date of the lease was March 1, 1981. Appellant's check for the rental was dated February 25, 1981. The envelope containing the check was postmarked in Trenton, New Jersey, on February 27, 1981, "PM" and received by BLM in Reno, Nevada, on March 5, 1981. BLM notified appellant that the lease had terminated for failure to pay the rental timely.

Appellant petitioned for reinstatement of the lease stating that proper due diligence and respect for authority had been maintained in making prompt and adequate annual rental fee. BLM denied reinstatement. On appeal appellant states that he misfiled the notice of rental due because of an office move, and that the payment was sent by mail on the 25th of February 1981, but that it was postmarked in Trenton on February 27. The appellant asserts that payment was in transit for 2 days prior to postmarking because the Lanoka Harbor Post Office is a branch post office which sends its mail for processing across the State to Trenton, New Jersey. Appellant states that he "relied on the U.S. mail, determining that the item would be processed within reasonable time and expediency."

[1] The applicable regulations, which govern here, make clear that "[f]iling is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing." 43 CFR 1821.2-2(f). Additionally, the regulations make it clear that payment must actually be received in the state office on or before the anniversary date. 43 CFR 3108.2-1(a).

As we have indicated, mailing a payment does not constitute filing. The postmark date of a rental payment is generally deemed to be the date of mailing, unless there is satisfactory corroborating evidence to support a lessee's assertion that the mailing occurred at a date earlier than indicated by the postmark. Annie Mae Buckley, 44 IBLA 99 (1979). One type of satisfactory evidence would include a statement by

a postal official explaining the delay in processing mail from a particular location on the day it is asserted mail was deposited in a postal receptacle at that location. Thus, in order to show that the payment was mailed before February 27, appellant would have had to offer some persuasive explanation of why the letter was not also postmarked before February 27, as would normally be expected. See, e.g., Edward Malz, 33 IBLA 22 (1977). In the absence of satisfactory corroborating evidence to the contrary, BLM was correct in regarding the postmark date as the mailing date. Annie Mae Buckley, *supra*; Daniel Ashley Jenks, 36 IBLA 268 (1978).

[2, 3] A terminated oil and gas lease may be reinstated only if the failure to make timely payment was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1976). Late payment is justifiable if it is attributable to causes beyond the lessee's control. See Annie Mae Buckley, *supra*, and Daniel Ashley Jenks, *supra*. Reasonable diligence generally requires sending or delivering payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2). BLM properly denied appellant's petition for reinstatement on the ground that the posting of the payment, February 27 in Trenton, New Jersey, did not constitute reasonable diligence when the payment was due such a distance away in Reno, Nevada, on March 1, 1981. We have repeatedly considered this situation, and have held that mailing the rental 2 days before the due date does not constitute reasonable diligence. Norman C. Stroink, 44 IBLA 188 (1979); Reynolds Mining Corp., 39 IBLA 405 (1979); Helen Bacha, 39 IBLA 146 (1979).

In Reynolds Mining Corp., *supra*, we discussed mailing of rental payments over even a shorter distance than the instant case, 2 days before the due date. There the elapsed time was exactly the same as, in the instant case, where a letter was mailed on January 30, due February 1. We found lack of reasonable diligence, stating:

We cannot say that mailing a payment this distance [Texas to Utah] two days in advance of the due date takes into account "normal delays" in the handling of the mail. Indeed, it is clear that a letter in that instance might arrive on time only if there were no delays of any kind, but rather was handled with extraordinary dispatch.

Appellant's payment was not mailed early enough to allow for any delays in collection, transmittal, and delivery of the mail. Appellant's petition for reinstatement was properly denied.

In addition, appellant has not shown that the failure to pay the lease rental timely was justifiable. In order for late payment to be considered justifiable it must be established that at or near the anniversary date of the lease there existed sufficiently extenuating circumstances outside the lessee's control which affected the actions

in paying the rental. Martin Mattler, 53 IBLA 323, 88 I.D. 420 (1981). The misfiling of the notice of rental due during an office move is not an extenuating circumstance outside of the lessee's control.

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.

Edward W. Stuebing

Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge

