

DOME PETROLEUM CORP.

IBLA 81-831

Decided November 9, 1981

Appeal from decision of New Mexico State Office, Bureau of Land Management, holding oil and gas lease NM 24455-A to have terminated by operation of law.

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

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. However, where the lessee has entrusted payment to an employee who is hospitalized because of an injury, and another

employee who assumes the injured employee's responsibilities fails to make timely payment, the injury of the employee is not the proximate cause of the late payment.

APPEARANCES: Debra R. Lappin, Esq., Robert C. Hawley, Esq., Gretchen VanderWerf, Esq., Susan L. Perkins, Esq., Denver, Colorado, for appellant; Robert Uram, Esq., Office of the Solicitor, Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Oil and gas lease NM 24455-A was issued on March 1, 1975. The annual rental for the seventh lease year was due on March 2, 1981. The New Mexico State Office, Bureau of Land Management (BLM), received the rental payment on March 20, 1981, on behalf of Dome Petroleum Corporation (Dome). On March 24, 1981, BLM received a letter from Dome explaining as follows:

Our computer inadvertently omitted one tract under this lease, thereby incorrectly reducing the rental. This error was noted by our Lease Rental Clerk and the check put to the side so that a manual check could be written for the correct amount. Unfortunately, before this could be done, the Lease Rental Clerk broke her leg in two places, as well as her arm. Thus traumatized and hospitalized, she was unable to relay to anyone the action required on the captioned lease.

By letter dated May 7, 1981, BLM's Chief, Oil and Gas Section, notified Dome that its oil and gas lease NM 24455-A had terminated on

March 1, 1981, for failure to pay the annual rental on or before March 1, 1981. 1/

On June 1, 1981, the New Mexico State Office issued a formal decision holding that the lease terminated on March 1, 1981 (see n.1), pursuant to 30 U.S.C. § 188 (1976), because the annual rental which was due on March 1, 1981, was not received until March 20, 1981. The decision stated that under 43 CFR 3108.2-1(c) the lessee was allowed 15 days from receipt of the decision within which to file a petition for reinstatement of the lease and to submit a showing that failure to pay the rental on or before the anniversary date was justifiable or not due to lack of reasonable diligence on the part of the lessee.

In its notice of appeal and statement of reasons filed June 8, 1981, 2/ appellant contends, inter alia, that BLM's decision to terminate the lease should be reversed because appellant paid the rental within 20 days of the due date 3/ and appellant's failure to pay timely the rental was not due to a lack of reasonable diligence, but rather to excusable clerical error which reasonably could not have been prevented by Dome.

1/ The correct due date for the rental payment as subsequently recognized by BLM was Monday, Mar. 2, 1981, as Mar. 1, 1981, was a Sunday.

2/ Appellant did not file a petition for reinstatement of the lease. Its notice of appeal was directed to BLM's May 7, 1981, letter. However, its letter received by BLM on Mar. 24, 1981, was clearly couched in terms of a petition for reinstatement. Therefore, the May 7, 1981, letter may be considered the denial of that "petition." Dome filed a timely appeal of that denial.

3/ In its letter of May 7, 1981, BLM had mistakenly stated that the rental was not received until Mar. 24, 1981. The rental was actually received by BLM on Mar. 20, 1981.

Appellant explained the events which led to its failure to make a timely rental payment as follows:

During the week ending February 13, 1981, Frances Jones, Dome's Lease Rental Analyst, discovered that the computer check issued to pay the delay rentals on the subject lease was for \$240, rather than the correct amount of \$320. Ms. Jones removed the check from the computerized system and flagged the Lease record so that she could request a new delay rental check in the correct amount. Over the holiday weekend which followed, Ms. Jones was seriously injured in an accident. The following week Ms. Jones underwent surgery and was incapacitated until late March, 1981. Diane Tower, who assumed Ms. Jones' responsibilities, did not discover the flag on the Lease record until mid-March, 1981, because the flag had been accidentally tucked into the record book itself.

Appellant submitted affidavits of Frances Jones and Diane Tower in support of its explanation of the facts.

In its answer, BLM states that the lease terminated by operation of law because the rent was not paid on time. BLM contends that the lessee does not qualify for reinstatement because it did not show that the failure to make timely payment was either justifiable or not due to a lack of reasonable diligence. BLM states that the failure to pay annual rental on time is justifiable only if it is caused by circumstances beyond the control of the lessee. BLM asserts that the failure to pay in this case is attributable to events within Dome's control and that the record does not support a finding that the injury to Ms. Jones caused the annual rental to be paid untimely.

[1] An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-1(a). A terminated lease can be reinstated only if, among other requirements, the lessee shows that the failure to pay on time was either justifiable or not due to lack of reasonable diligence. 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1(c).

Appellant has made no allegation that payment of the rental was made on or before the anniversary date of the lease. A check for the rental was hand-delivered to the BLM office on March 20, 1981. Delivering the payment to BLM after it is due does not constitute reasonable diligence. See 43 CFR 3108.2-1(a); Melbourne Concept Profit Sharing Trust, 46 IBLA 87 (1980); Gilbert Mark Castillo, 36 IBLA 32 (1978).

[2] A failure to make timely payment may be justifiable, however, if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. International Resource Enterprises, Inc., 55 IBLA 386 (1981); see Ramoco, Inc. v. Andrus, 649 F.2d 814 (10th Cir. 1981); see also Martin Mattler, 53 IBLA 323, 88 I.D. 420 (1981); Bernard W. Crowe, 40 IBLA 114 (1979). Proximity in time and causality of the unfavorable occurrence are essential elements. Earl Chancellor, 24 IBLA 121 (1976). Accordingly, we are most concerned with circumstances affecting appellant at or near the

anniversary date of the lease. Negligence, forgetfulness, or inadvertence do not justify failure to pay timely since they are events within the lessee's control. Jan R. Christensen, 15 IBLA 72, 75 (1974).

We do not believe that appellant has provided adequate justification for the late payment. It is true that circumstances adversely affecting an employee entrusted with payment of the annual rental may justify a late payment. See David Kirkland, 19 IBLA 305 (1975) (secretary solely responsible for personal accounts in hospital under sedatives on and before the due date). However, in her affidavit (pages 1-2), Ms. Tower stated that she assumed the responsibilities of Frances Jones on February 17, 1981; that she requested checks in the correct amount for those leases which were flagged and which had not been handled earlier by Frances Jones; that by February 20, 1981, all of the checks which were flagged had been issued in the proper amount and sent for payment of March rentals; that the flag for the lease in question had been accidentally tucked into a book and was not readily visible; and that the check for lease NM 24455-A was not discovered until sometime in March. ^{4/} It is apparent from Ms. Tower's statement that other

^{4/} There is a certain inconsistency in the affidavits of Ms. Jones and Ms. Tower. Ms. Jones explained her procedures prior to her accident as follows:

"In February, 1981, I was working on paying the delay rentals due on all of Dome's leases for March, 1981. The checks came out of the computer during the first week in February. My analysis of the computer printed delay rental checks revealed that approximately one dozen checks were incorrect. One of these checks was the delay rental check on Federal Lease No. NM-24455-A. Dome Petroleum Corp.'s Lease No. NM-24455-A covered 640 acres. The lease annual rentals are 50 cents per acre. Dome had assigned operating rights in one quarter section, 160 acres. Because of this, the computer had made the check out for \$240.00; however, the amount should have been \$320.00. On this particular check, as well as the remaining ten or twelve checks, I placed a

checks were issued in the normal course of business, despite Ms. Jones' accident. Therefore, the proximate cause of the failure to make timely payment for the lease in this case was the fact that the flag had been accidentally tucked into the book, rather than the injury to Ms. Jones. Ms. Jones stated in her affidavit at page 3:

In my opinion, the failure of Diane Tower to catch this one payment was completely inadvertent and due entirely to the fact that the flag which I had placed in the book for my reference had been accidentally tucked in and was not obvious to anyone looking at the flagged pages of the books.

The Board has held that mere inadvertence or negligence of the lessee's agent or employee is not sufficient justification for reinstatement. Phillips Petroleum Co., 29 IBLA 114 (1977); Serio

fn. 4 (continued)

yellow self-adhesive tab on the rental book page on which this lease was described. This was my reminder system to request a manual check and personally see to proper posting of the delay rental check. The notation that I made to myself on the delay rental check for Federal Lease No. NM-24455-A was made on or about February 13, 1981, which was a Friday. The following weekend was a long weekend due to a holiday on February 16, 1981, which was a Monday. On Friday, February 13, I manually requested the checks that I had not been able to mail out during that work week to insure that proper payment was made of all delay rentals. Under usual procedure, the check requests would be issued and back to me within three days and the mailing of the delay rental checks would occur no later than the 19th or 20th of the month, which is substantial time for those checks to be received by the lessors." (Emphasis added.)

Therefore, it would appear from her affidavit that she requested new checks for all the incorrect ones on February 13th, prior to her accident. However, Ms. Tower stated in her affidavit: "As first priority, I went through the flags placed on lease delay rentals, the amounts of which were incorrect. I requested checks in the correct amount for those leases which were flagged and which had not been handled earlier by Frances Jones." Apparently, based on Ms. Tower's affidavit, Ms. Jones did not request new checks for all the leases.

Exploration Co., 26 IBLA 106 (1976); Samuel J. Testagrossa, 25 IBLA 64 (1976). In addition, the complexities of appellant's business operations do not make its actions justifiable when they would not be so if committed by an individual lessee. Fuel Resources Development Co., 43 IBLA 19, 23 (1979); see Serio Exploration Co., supra at 108; James Donoghue, 25 IBLA 280, 281 (1976); Monturah Co., 10 IBLA 347, 348 (1973), dismissed without prejudice sub nom. Pashayan v. Morton, No. F-74-5-Civ. (E.D. Cal., Apr. 11, 1974).

Given these facts, we cannot find that the failure to make a timely rental payment was justifiable.

It is not necessary to consider appellant's other arguments presented on appeal, as the above discussion is dispositive of this case.

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.

Bruce R. Harris
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge

