

MAX W. YOUNG

IBLA 81-552

Decided November 30, 1981

Appeal from decision of the Utah State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease U-44788.

Affirmed.

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

Failure to pay the annual rental for an oil and gas lease on which there is no well capable of producing oil or gas in paying quantities on or before the anniversary date results in the automatic termination of the lease by operation of law. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was paid timely. A lease may be reinstated only if the failure to pay the rental timely 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).

2. Evidence: Generally -- Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Where the date marked on an envelope by a private postage meter conflicts with the postmark made by a United States post office, the United States postmark will be deemed the date of mailing in the absence of satisfactory corroborating evidence that the mailing occurred earlier.

3. Oil and Gas Leases: Reinstatement

Mailing a rental payment the afternoon of the day due does not constitute reasonable diligence.

APPEARANCES: Max W. Young, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Max W. Young has appealed from the March 31, 1981, decision of the Utah State Office, Bureau of Land Management (BLM), denying reinstatement of oil and gas lease U-44788.

The decision held that appellant's lease automatically terminated by operation of law March 2, 1981, because appellant's rental was not received on that day. The rental was received on March 3, 1981. Appellant filed a notice of appeal in which he requested a hearing. By order dated June 18, 1981, the Board denied this request, pointing out that appellant had shown no reason in support of his request for a hearing. Subsequently, appellant submitted the following reasons why his lease should be reinstated:

The payment itself contained two different postmarks, one of February 26, 1981, well in advance of the lease termination date, and March 2, 1981, the actual termination date as stated in the order.

It is generally accepted practice to accept as constructively received when the postmark supports the due date and absent any specific provision to the contrary BLM acted in an arbitrary and capricious manner in requesting the payment.

It is impossible absent notice to the contrary that I would have any reason to believe a payment mailed on February 26th, within the city, would not be timely received by BLM. No such notice was received.

[1] An oil and gas lease on which there is no well capable of producing oil or 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). The date of receipt of the rental and not the date of mailing is controlling in determining whether rental on an oil and gas lease was paid timely. 43 CFR 1821.2-2(d), (f); Overthrust Oil & Gas Corp., 52 IBLA 119, 88 I.D. 38 (1981). Because appellant's rental payment was not received on March 2, 1981, the due date, his lease terminated automatically. A terminated lease can be reinstated only if, among other requirements, the lessee shows his 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).

[2] Reasonable diligence normally requires mailing the rental payment sufficiently in advance of the due 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 will be presumed to be the date of mailing in the absence of satisfactory corroborating evidence that mailing occurred earlier. ^{1/} Margaret Lee Pirtle, 54 IBLA 113 (1981); Harold W. Fullerton, 46 IBLA 116 (1980); Annie Mae Buckley, 44 IBLA 99 (1979); Glen C. Chronister, 41 IBLA 346 (1979); Joseph W. Semien, 41 IBLA 185 (1979); Manuel F. Cueto, Jr., 40 IBLA 265 (1979); Daniel Ashley Jenks, 36 IBLA 268 (1978); Harpel Petroleum Corp., 36 IBLA 39 (1978); David R. Smith, 33 IBLA 63 (1977); Richard L. Triplett II, 32 IBLA 369 (1977); David W. Gregg, 32 IBLA 293 (1977); Agnes M. French, 28 IBLA 282 (1976). As we noted above, the date of receipt by the BLM office controls in determining whether a lease terminated; the postmark date is only relevant in considering whether the lessee exercised reasonable diligence so as to warrant reinstatement of the lease. David R. Smith, *supra*.

The envelope containing the payment bears a mark by a private postage meter dated February 27, 1981, not February 26 as claimed by appellant. The postmark made by the United States Post Office, however, is dated "P.M. 2 MAR. 1981." Appellant suggests that the date stamped by this private postage machine should be considered the date of mailing instead of the postmark made by the United States Post Office. A postmark, however, may be defined as "a stamp or mark put on letters or other mailable matter received at the post-office for the transmission through the mails." Black's Law Dictionary 1050

^{1/} The presumption that the postmark was the date of mailing is a rebuttable presumption. In Phyllis Lane Zehr, 44 IBLA 261 (1979), the rental was received late in an envelope bearing a Billings, Montana, postmark of June 2. The lessee stated that she had mailed it from Wilmington, Delaware, on May 29, and provided an affidavit from her employer that she was in Wilmington, Delaware, from May 29 to June 2, so that she could not have mailed it in Billings. The Board held that the presumption was overcome. In other cases, the Board has held that a letter from postal authorities explaining how the delay in postmarking the envelope occurred may overcome the presumption that the letter was mailed as of the postmarked date. *E.g.*, Edward Malz, 33 IBLA 22 (1977); Paul D. Beaird, Jr., 26 IBLA 79 (1976); A. Helander, 25 IBLA 54 (1976). The fact that the rental check may have been dated in advance of the postmark date was not held to be sufficient to overcome the presumption of mailing on the date postmarked. *E.g.*, David W. Gregg, *supra*. In Harpel Petroleum Corp., *supra*, appellant submitted copies of its canceled checks dated the same date as the rental payment, but offered no evidence suggesting when the checks were deposited in the mail. However, in Elliott Davis, 26 IBLA 91 (1976), discussed in n.2, *infra*, the lessees showed that other checks written the same date as the rental payment had cleared before the due date. When combined with other evidence, this helped to overcome the presumption accorded to the postmark.

(5th ed. 1979). Thus, where a postmark date conflicts with a date made by a private postage meter, the postmark will be considered the date of mailing, although this presumption may be overcome by satisfactory evidence corroborating a lessee's assertion that the mailing occurred at an earlier date. See, e.g., Elliott Davis, 26 IBLA 91 (1976). ^{2/} Such corroboration is properly required because of the potential ability of the user of a private postage meter to apply any postmark date convenient for his purposes. See Lindemood v. Commissioner of Internal Revenue, 566 F.2d 646 (9th Cir. 1977). Thus, a private postage meter date is no more corroborative of the date of mailing than the date on the rental check which has not been held to be sufficient to overcome the presumption. David W. Gregg, supra; see Harpel Petroleum Corp., supra.

[3] In the instant case, however, appellant has submitted no corroborative evidence to support his assertion that the rental payment was mailed prior to March 2. Thus, the State office properly determined that the rental payment was mailed on March 2, the day the payment had to be received. Mailing a rental payment the afternoon of

^{2/} In that case, the Board considered a claim that a rental payment was mailed May 9, 1975, the date stamped on the envelope by private postal meter. The post office postmark, however, was dated June 3, 1975. The Board held that the presumption that the letter was mailed on June 3 was overcome by the evidence which included sworn affidavits by the manager of the land department of appellants' business and a secretary which set forth in detail the procedures used in preparing and signing the check and placing it in the mail for delivery. The manager also stated that he had contacted the post office which suggested that the June 3 postmark could have resulted from an initial misdelivery of the envelope followed by its re mailing by the occupant at the place of delivery. In this situation, a new postmark would have been made in addition to the private meter date. It was noted that all mail which has been run through a private postage meter was not stamped by the postal service upon its original receipt unless that mail was received on a date different from the date shown on the stamp.

An affidavit filed by appellants' secretary stated this was the first time that lease rental check arrived late. Appellants also submitted copies of all checks drawn by them between May 1 and May 14. With the exception of the check drawn to BLM, all the checks that were mailed cleared within a few days after being deposited in the mail. The Board acknowledged that the possibility that the check may have been misplaced at appellants' place of business and upon its subsequent discovery, placed in the United States mail, resulting in the June 3 postmark period. On the other hand, the Board acknowledged that the envelope after being metered may have been placed in the mail, subsequently misdirected or lost, and later introduced into the mail and postmarked June 3. The Board held that while appellants could not prove conclusively that they mailed the envelope on May 9, the standard operating procedures of the company and its business records indicate that it was mailed on such date.

the date due does not constitute reasonable diligence. Joseph W. Semien, supra. In the absence of any showing that the late payment was justifiable for reasons beyond appellant's control, reinstatement is properly denied. See Ram Petroleums, Inc. v. Andrus, 658 F.2d 1349 (9th Cir. 1981).

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.

Anne Poindexter Lewis
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

