

TERRY K. WEED

IBLA 82-106

Decided January 28, 1982

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease application M 50001 (SD).

Affirmed.

- 1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

An oil and gas lease application, form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered; and appellant's failure to check these items on the form cannot be cured by a simple amended filing where the rights of the second-drawn applicant have intervened.

APPEARANCES: Ephraim M. Newmark, Esq., Atlanta, Georgia, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Terry K. Weed has appealed from the October 7, 1981, decision of the Montana State Office, Bureau of Land Management (BLM), rejecting his simultaneously filed application for oil and gas lease M 50001 (SD). Appellant's application was drawn first for parcel MT 128 in the January 1981 drawing. His application was rejected because he failed to answer questions (d) through (f) on the reverse side of the card. This portion of the application appears as follows:

UNDERSIGNED CERTIFIES AS FOLLOWS (check appropriate boxes) [original in italics]:

\* \* \* \* \*

(d) Does any party, other than the applicant and those identified herein as other parties in interest, own or hold any interest in this application or the offer or lease which may result? Yes  No

(e) Does any agreement, understanding, or arrangement exist which requires the undersigned to assign, or by which the undersigned has assigned or agreed to assign, any interest in this application, or the offer or lease which may result, to anyone other than those identified herein as other parties in interest? Yes  No

(f) Does the undersigned have any interest in any other application filed for the same parcel as this application? Yes  No

There is also a space provided on the form for an applicant to name any other parties in interest.

Appellant contends that there is no specific regulatory requirement for the completion of items (d) through (f) on the application form. He asserts that items (d) through (f) are either redundant or duplicative, since the application provides a space for listing other parties in interest. Appellant maintains that since he did not list any other parties or interests in that space, he is in technical compliance with the regulations and has provided sufficient information to show that he is a qualified applicant. He contends that his failure to complete these items does not constitute a substantive defect. He notes that failure to complete items (d) through (f) is not listed in 43 CFR 3112.5 which specifies what constitutes an unacceptable filing. Appellant contends that since he listed no other parties and interests on the application, he in fact answered questions (d) through (f) in the negative.

We must begin our answer to these contentions by observing generally that under the Mineral Leasing Act, the Department is authorized to issue a noncompetitive oil and gas lease only to the first qualified applicant. See 30 U.S.C. § 226(c) (1976).

The Department has promulgated regulations that provide for the simultaneous filing of applications to be drawn for consideration. 43 CFR Subpart 3112. "If the Secretary is to fulfill his obligation to lease to the first-qualified applicant, as strict a compliance with the regulations as possible is necessary." Shearn v. Andrus, No. 77-1228, slip op. at 6 (10th Cir. Sept. 19, 1977), quoted in Sorensen v. Andrus, 456 F. Supp. 499 (D. Wyo. 1978). We have consistently required strict compliance with the requirements relating to lease applications, and failure to complete any part of an application will disqualify an applicant. See Sorensen v. Andrus, supra at 501, and cases cited therein.

[1] Contrary to appellant's contentions, the applicable regulations clearly require rejection of this application. One regulation, 43 CFR 3112.2-1(a), requires that an application be "completed, signed and filed pursuant to the regulations of this subpart." Another regulation, 43 CFR 3112.6-1(a), provides that any application not filed in accordance with section 3112.2 shall be rejected. This Board has consistently held that an oil and gas lease application is not completed

in accordance with 43 CFR 3112.2-1 or the explicit instructions on the application itself where questions (d) through (f) are left unanswered. E.g., Dr. Jose Trabal, 60 IBLA 97 (1981); Clyde K. Kobbeman, 58 IBLA 268, 80 I.D. 915 (1981); Vincent M. D'Amico, 55 IBLA 16 (1981). Those cases explain that answering questions (d) through (f) is a requirement distinct from listing other parties in interest elsewhere on the form.

Although failure to answer questions (d) through (f) is not expressly included among the defects listed in Departmental regulation 43 CFR 3112.5, which sets forth criteria for screening application cards prior to a drawing, this omission does not mean BLM must accept appellant's application. Subsection (b) of that regulation notes that failure to identify a filing as unacceptable prior to selection does not bar rejection after selection for the reasons listed in that section or any reasons set forth in section 3112.6. As we just noted, section 3112.6-1(a) makes clear that an application will be rejected if not filed in accordance with section 3112.2 which requires that applications be "completed." We may not justify, simply by saying this violation is unimportant, a departure in a single case from an otherwise consistent policy of rejecting applications that do not conform to the regulation. See McKay v. Wahlenmaier, 226 F.2d 35, 43 (D.C. Cir. 1955).

Furthermore, appellant's failure to check these items on the form cannot be cured by a simple amended filing as appellant contends. Giving an unqualified first-drawn applicant the opportunity to make an amended filing would infringe on the rights of the second-drawn, first qualified applicant. See Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1070 (10th Cir. 1976).

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.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Edward W. Stuebing  
Administrative Judge

