

U.S. GEOTHERMAL CORP.  
EARTH POWER CORP.

IBLA 81-666

81-667 Decided January 29, 1982

Appeals from decisions of Nevada State Office, Bureau of Land Management, denying petitions for reinstatement of noncompetitive geothermal resources leases. N-20628, N-20630, N-20631, and N-15767.

Affirmed.

1. Geothermal Leases: Reinstatement

A late rental payment may be "justifiable" and entitle a geothermal lease, which terminated by operation of law, to reinstatement 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, circumstances are within the control of the lessee where the proximate cause of a late payment was a computer error and not the illness of the individual entrusted with making the payment.

APPEARANCES: Lorraine Grace, President, U.S. Geothermal Corp., for appellant U.S. Geothermal Corp; Ronald C. Barr, President, Earth Power Corp., for appellant Earth Power Corp.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

U.S. Geothermal Corporation and Earth Power Corporation have appealed from decisions of the Nevada State Office, Bureau of Land Management (BLM), dated April 17, 1981, denying their petitions for reinstatement of noncompetitive geothermal resources leases, N-20628, N-20630, N-20631, and N-15767, which terminated by operation of law on the lease anniversary date, June 1, 1980, for nonpayment of the annual rental. <sup>1/</sup> (Because June 1, 1980, was a Sunday, the rental could have been timely paid on June 2, 1980. 43 CFR 1821.2-2(e).)

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<sup>1/</sup> We have chosen to consolidate these appeals because they present identical factual and legal issues.

U.S. Geothermal and Earth Power filed their petitions for reinstatement on December 9 and December 11, 1980, respectively. <sup>2/</sup> They contended that nonpayment of the annual rental was "justifiable" because it was caused by the illness of the person entrusted with making the payment, Alexander J. S. Shradly. They also submitted the affidavit of Shradly, dated December 4, 1980, in which he states that he was hospitalized "as an emergency case" between May 12 and 20, 1980, with an "acute gallstone attack." Subsequent thereto, he states, he was ordered by his doctor "to rest at home and not to return to work before June 2, 1980." Shradly's wife was also under her doctor's care during this time period. Shradly is one of four employees of Grace Geothermal Co., Inc. (Grace Geothermal), a geothermal consulting and management firm, whose clients include U.S. Geothermal and Earth Power. Shradly states that the other three employees are "not familiar" with his records.

In its decision, BLM concluded that appellants had not provided "adequate justification" for nonpayment of the annual rental. BLM also noted that rental payments had been timely made "on June 2, 1980" for other geothermal resources leases held by appellants.

In their statements of reasons for appeal, appellants again contend that nonpayment of the annual rental was "justifiable" because they were entitled to rely on Shradly and that denial of reinstatement would "thwart" Congressional intent to encourage geothermal exploration and development. Appellants submit another affidavit of Shradly, dated May 11, 1981, in which he further explains the procedure by which he handled rental payments. He states that each lease for which he had the responsibility of making rental payments was entered into a computer, which issued a check "usually one month before the lease rental payment [was] \* \* \* due." He further states that "[d]ue to an oversight" the subject leases were not entered into the computer. However, the other leases cited in the BLM decision, for which timely payment was made, were entered and rental checks routinely mailed out by Shradly's secretary. Shradly concludes:

Due to my illness and absence from the office pursuant to doctor's orders, I was unable to implement my back-up system whereby I double check the computer system with a comparison to the master list and the BLM reminder notices. This system has proved successful in the past as over more than a four-year period I was responsible for lease rental payments for approximately one hundred active Federal leases in seven Western states. During this period, I

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<sup>2/</sup> Rental checks were submitted with the petitions for reinstatement. Neither the statute nor the regulations impose any time limit for the receipt of rental payment or for the filing of a petition for reinstatement. See 30 U.S.C. § 1004(c) (1976); 43 CFR 3244.2-2(b).

made all lease rental payments in a timely fashion. [Emphasis added.]

[1] Section 5(c) of the Geothermal Steam Act of 1970, 30 U.S.C. § 1004(c) (1976), provides that a geothermal resources lease, where there is no well capable of producing geothermal resources in commercial quantities, shall terminate by operation of law for "failure to pay rental on or before the anniversary date." Such a lease may be reinstated where "it is shown to the satisfaction of the Secretary of the Interior that the failure to pay timely the lease rental was justifiable or not due to a lack of reasonable diligence." 30 U.S.C. § 1004(c) (1976). See 43 CFR 3244.2-2(b).

A failure to make timely 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. International Resource Enterprises, Inc., 55 IBLA 386 (1981); Leonard Lundgren, 53 IBLA 149 (1981). <sup>3/</sup> Proximity in time and causality of the unfavorable occurrence are essential elements.

In International Resource Enterprises, Inc., supra at 388, we concluded that the "circumstances surrounding an employee entrusted with payment of the annual rental may justify a late payment" where the employee is so incapacitated as not to be reasonably able to attend to normal business matters. See David Kirkland, 19 IBLA 305 (1975). However, we do not believe that appellants have presented sufficient evidence of such circumstances as would justify the late payment of the annual rentals in these cases.

From a review of the evidence, we must conclude that the proximate cause of appellant's late payment of the annual rental was Grace Geothermal's failure to enter appellants' leases into its computer and not the illness of Shradly. It seems clear that but for the computer error the annual rental would have been paid as the annual rentals for leases with the same approximate anniversary date were paid timely. While Shradly asserts the existence of a so-called "backup system," whereby he doublechecked the computer lists with a "master list" and BLM reminder notices, there is some question of the extent to which Grace Geothermal relied on Shradly's personal doublecheck of the computer rather than reliance on the computer itself in the payment of its clients' annual rentals. We note that upon Shradly's absence from the office no attempt was made to delegate the responsibilities of doublechecking the computer to anyone else in the office. Even though Shradly states that the other

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<sup>3/</sup> International Resource Enterprises, Inc., supra, involved an oil and gas lease. Nevertheless, we have repeatedly held that the principles established in oil and gas reinstatement cases shall govern geothermal reinstatement cases. Leonard Lundgren, supra; O'Brien Resources Corp., 41 IBLA 367 (1979), and cases cited therein.

employees were "not familiar" with his records, the comparison of a master list with BLM reminder notices does not appear to be a task which would require comprehensive knowledge of records. Furthermore, there is no evidence that the system was implemented upon Shrady's return to the office with respect to leases that might have fallen due during his rather brief absence. The annual rentals for the leases in question were not paid until December 9 and 11, 1980, well after their anniversary date. <sup>4/</sup>

In view of Grace Geothermal's apparent reliance on the computer in the payment of the annual rental, we must conclude that it was the failure to enter the information into the computer and not Shrady's injury which proximately caused the failure to pay timely the annual rental. See Dome Petroleum Corp., 59 IBLA 370, 88 I.D. 1012 (1981).

We believe that, ultimately, the circumstances which caused the late payment in the present case were within appellants' control. In Ram Petroleum, Inc. v. Andrus, 658 F.2d 1349, 1354 (9th Cir. 1981), the court set forth the reasons for denying reinstatement under such circumstances. It stated:

The first two are: (1) excuses based on employee misconduct and other factors within a lessee-employer's control are easily manufactured and, thus, likely to be used by lessees whose failure to pay is either not justifiable or due to a lack of reasonable diligence; (2) affording relief in situations in which the failure to pay was due to circumstances within the control of the lessee would reduce the incentives for lessees to develop internal procedures that will insure timely payment. The third reason is that to provide reinstatement when an employee of the lessee is responsible for forfeiture, and not when the lessee is solely responsible, discriminates against those who have no employees on whom to place the blame for failure to make timely payments.

See also Ramoco, Inc. v. Andrus, 649 F.2d 814 (10th Cir. 1981).

The Board has consistently held that mere inadvertence or negligence of the lessee's agent or employee is not sufficient justification for reinstatement. Dome Petroleum Corp., *supra*, and cases cited therein. Accordingly, we must conclude that BLM properly denied appellants' petitions for reinstatement.

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<sup>4/</sup> Shrady states that he was not to return to work before June 2, 1980. He does not state when he actually did return. Assuming he did return on June 2, it is possible that a check of the "backup system" would have revealed the missing payments, and that payment could have been wired on June 2 to prevent termination.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

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Bruce R. Harris  
Administrative Judge

We concur:

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C. Randall Grant, Jr.  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

