

Editor's note: appealed -- reversed, Civ.No. C82-0188 (D.Wyo. Dec. 16, 1982)

DAVID E. COOLEY, JR.

IBLA 81-352

Decided February 25, 1982

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying appellant's petition for reinstatement of oil and gas lease. W-65270.

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 or before the anniversary date results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). A lease may be reinstated if the failure to pay the rental 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. Oil and Gas Leases: Reinstatement

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. Mailing a rental payment after it is due does not constitute reasonable diligence.

3. Oil and Gas Leases: Reinstatement

For delay in submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee

must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Late payment is not justified by lessee's inadvertent misplacement of office records during the changeover in his office location.

APPEARANCES: David E. Cooley, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

David E. Cooley, Jr., has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated January 12, 1981, which denied his petition for reinstatement for oil and gas lease W-65270. The decision determined that the lease had terminated by operation of law for failure to pay the annual rental of \$640 on or before December 1, 1980, the anniversary date of the lease. The envelope containing the annual rental was postmarked December 2, 1980, and received by BLM on December 8, 1980.

[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). When appellant's rental payment was not received on December 1, 1980, 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 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). In this case, appellant's payment envelope was post marked the day after the due date. Mailing the payment after it is due does not constitute reasonable diligence. Southern Union Co., 60 IBLA 181 (1981); Gilbert Mark Castillo, 36 IBLA 32 (1978); Apostolos Paliombeis, 30 IBLA 153 (1977).

[3] For the late submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Ram Petroleums, Inc. v. Andrus, 658 F.2d 1349 (9th Cir. 1981). Appellant stated in his petition for reinstatement that his payment was late because of dissolution of his law partnership in September 1980. He asserts that when he moved his office October 11 and 12, 1980, his lease records were inadvertently misplaced in his ex-partner's new office and were not recovered until November 29, 1980. The check for payment of the annual rental was made out on November 30. He also alluded to constant travel in his new practice and attending a funeral on December 1 of an infant nephew who died on November 28, 1980, as factors preventing timely payment.

Generally, this reasonable diligence standard contemplates occurrences such as injury, David Kirkland, 19 IBLA 305 (1975); or illness, Billy Wright, 29 IBLA 81 (1977); or death, Fredres E. Laubaugh, 24 IBLA 306 (1976). Instances of simple forgetfulness, inadvertence, ignorance of the regulations, reliance on BLM courtesy billing notices, and similar occurrences do not excuse lack of diligence. Martin Mattler, 53 IBLA 323 (1981). Similarly, appellant's inadvertent misplacement of his office records during the changeover in his office location does not justify his late payment. See Mono Power Co., 28 IBLA 289 (1976).

Appellant's mention of the death and funeral of an infant nephew, although proximate in time to the due date of the lease, is not adequate justification when he has indicated that it was the earlier circumstances surrounding the dissolution of his partnership and particularly the fact that his business records were unavailable until Saturday, November 29, 1980, 2 days before the due date that prevented timely payment.

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.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Douglas E. Henriques
Administrative Judge

