

GULF OIL CORP.

IBLA 82-82

Decided April 23, 1982

Appeal from decision of the New Mexico State Office, Bureau of Land Management, holding oil and gas lease NM 12846 terminated for nonpayment of rental.

Affirmed.

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

The lessee of an oil and gas lease issued after Sept. 2, 1960, that has reached the end of its primary term must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1976) on or before the regular anniversary date of the lease. Failure to submit the rental timely results in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1976).

2. Oil and Gas Leases: Reinstatement

The Secretary is without authority under existing law to reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due unless such rental is paid or tendered within 20 days thereafter.

3. Oil and Gas Leases: Reinstatement

The discretionary authority granted to the Secretary of the Interior by 30 U.S.C. § 188(d) (1976) to reinstate oil and gas leases terminated for failure to pay rental timely, which leases are eligible for extensions under

30 U.S.C. § 226(e) (1976) because drilling operations commenced prior to the end of the term of the lease and were being diligently prosecuted at that time, applies only to oil and gas leases issued before Sept. 2, 1960. An oil and gas lease issued after that date, which has terminated for failure to pay rental timely, can be reinstated only under the provisions of 30 U.S.C. § 188(c) (1976).

APPEARANCES: William V. Kastler, Esq., for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Gulf Oil Corporation (Gulf) appeals the decision of the New Mexico State Office, Bureau of Land Management (BLM), dated October 15, 1981, holding that oil and gas lease NM 12846 had terminated for failure to pay timely the eleventh year annual rental.

The lease was originally issued to John T. Turner effective January 1, 1971, for a term of 10 years and so long thereafter as oil and gas was produced in paying quantities. On August 7, 1972, Turner assigned it to Gulf, effective October 1, 1972.

On November 13, 1980, Gulf notified BLM that it had designated Getty Oil Co. (Getty) as the operator of the lease. On November 19, 1980, BLM received a memorandum from Geological Survey (GS), Roswell, New Mexico, notifying it that drilling operations were being commenced on lands in the lease. GS later confirmed that, on December 31, 1980, there was drilling on the lease in a well that had been spudded by Getty on December 12, 1980. The record contains monthly reports showing that Getty drilled a 15,200-foot "Morrow test" well on the lease, evidently completing it in August 1981.

On August 17, 1981, BLM received the eleventh year rental of \$400 from Gulf. By memorandum dated August 26, 1981, the South Central Region, GS, informed BLM that the lease had become part of the El Alto Grande Unit Agreement No. 14-08-0001-19568, Lea County, New Mexico, effective August 25, 1981, but that no oil or gas had been discovered within the unit area at that time.

On September 15, 1981, GS notified BLM that drilling operations had been conducted on the lands included in the lease prior to its expiration date of December 31, 1980, recommending that the lease be extended pursuant to 43 CFR 3107.2. On October 7, 1981, BLM issued a decision extending the lease for 2 years ending December 31, 1982, pursuant to 30 U.S.C. § 226(e) (1976) and 43 CFR 3107.2-3, based upon Gulf's diligent "drilling over" activity.

However, on October 15, 1981, BLM vacated this decision and declared the lease terminated pursuant to 30 U.S.C. § 188 (1976), because the eleventh year rental, which was due on January 2, 1981, was not received until August 17, 1981. On October 23, 1981, Gulf appealed and petitioned for reinstatement.

[1] An oil and gas lease near the end of its primary term, on which there is no well capable of production, may be entitled to be extended for 2 years if actual drilling operations are commenced prior to the end of the primary term and are being diligently prosecuted at the end of the term. 30 U.S.C. § 226(e) (1976); 43 CFR 3107.2-3. However, the lessee is still required by 30 U.S.C. § 226(d) to maintain the life of the lease into an anticipated extended term by paying annual rental in advance for the prospective eleventh year. Western Reserves Oil Co., 46 IBLA 295 (1980); Shell Oil Co., 30 IBLA 290 (1977). Failure to pay on or before the anniversary date of the lease results in automatic termination of the lease under 30 U.S.C. § 188(b) (1976), and the question of whether the lease term might have been extended by "drilling over" becomes moot, unless the lessee shows that the lease is entitled to be reinstated. Id.

We recognize that a lessee is being required to submit the advance rental at a time when there is only a prospect that the lease will extend into the eleventh year, depending on whether the lessee's drilling activity is subsequently determined to be sufficient to qualify the lease term for extension. However, as we discussed in Oil Resources, Inc., 28 IBLA 394, 84 I.D. 394 (1977), there is no basis for interpreting the statutory requirement of advance payment as not applying to any extended term of the lease. Nor is this procedure irregular, since the lessee must similarly make its decision to begin drilling to extend the term just in advance of the end of the term, which is also the due date for the rental. Thus, the lessee may conveniently note at this time the necessity to pay rental for the continuing right to occupy the leasehold. Of course, if BLM subsequently determines that lessee is not entitled to an extension because its drilling was insufficient, it would be entitled to a refund of the advance rental.

Appellant did not pay rental for the eleventh year until August 17, 1981, more than 7 months after it was due. Accordingly, its lease terminated automatically by operation of law on January 2, 1981.

[2] There is no authority under existing law to reinstate appellant's lease. Under 30 U.S.C. § 188(c) (1976) and 43 CFR 3108.2-1(c), a terminated lease may be reinstated only if the rental was paid or tendered within 20 days after it was due. This payment was not made, and reinstatement of the lease is therefore not authorized. David Fasken, 48 IBLA 258 (1980).

[3] Nor does 30 U.S.C. § 188(d) (1976) afford appellant relief. This section is expressly limited to lessees who are entitled to extensions of their leases "pursuant to section 226-1 of [title 30]." This section, codified as 30 U.S.C. § 226-1 (1976), applies only to leases issued prior to September 2, 1960. Shell Oil Co., supra; Oil Resources, Inc., supra. Appellant's lease was issued after that date.

Appellant asserts that there are equitable grounds for reinstatement. Unfortunately, in the absence of statutory authority for reinstatement, the Department may not recognize equitable considerations, however compelling. David Fasken, supra.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed is affirmed.

Bernard V. Parrette
Chief Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge

