

EMERSON L. KUMM

IBLA 82-107

Decided May 19, 1982

Appeal from a decision of the Arizona State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease A 7723.

Affirmed.

1. Oil and Gas Leases: Reinstatement

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied. Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease.

APPEARANCES: Emerson L. Kumm, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Emerson L. Kumm has appealed from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated October 27, 1981, denying reinstatement of oil and gas lease A-7723 which terminated by operation of law pursuant to 30 U.S.C. § 188(b) (1976) for failure to pay annual rental due on October 1, 1981. Appellant's rental payment was received by BLM on October 9, 1981, in an envelope bearing an October 8, 1981, postmark.

[1] A terminated oil and gas lease may be reinstated upon proof that the lessor exercised reasonable diligence in submitting the payment or that lack of diligence was justified. 30 U.S.C. § 188(c) (1976). In the absence of such proof, a petition for reinstatement is properly denied. Harold W. Fullerton, 46 IBLA 116, 117 (1980), and cases cited. Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). Untimely payment of the rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Harold W. Fullerton, supra.

By petition for reinstatement dated October 14, 1981, appellant states that he mailed the payment at least a week ahead of its due date, though it was not received by BLM until October 9, 1981. In explaining the reason for the delay, appellant states that he placed the payment in the mail drop slot of his garage door but that it apparently "dropped out into the bushes beside the door and was not picked up by the postman." The letter apparently was not discovered by appellant until approximately a week after the payment was due.

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. As previously stated, a lease may be reinstated only if the untimely payment was either justifiable or not due to a lack of reasonable diligence by the lessee. Reasonable diligence has not been demonstrated by the appellant in placing the payment in an insecure mail slot, allowing the payment to fall to the ground and to remain there for 2 weeks. Appellant does not claim to have posted the payment in advance of the anniversary date; accordingly, his request for reinstatement is properly denied.

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.

Edward W. Stuebing
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

