

Editor's note: Reconsideration denied by order dated July 13, 1982

JACK J. GRYNBERG

IBLA 82-645

Decided June 15, 1982

Appeal from decision of Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease W 37489.

Affirmed.

1. Oil and Gas Leases: Reinstatement

Under 30 U.S.C. § 188(c) (1976) and 43 CFR 3108.2-1(c), the Department has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of annual rental unless rental payment has been made or tendered within 20 days of the due date.

APPEARANCES: Philip D. Barber, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Jack J. Grynberg appeals the March 19, 1982, decision of the Wyoming State Office, Bureau of Land Management (BLM), which denied his petition for reinstatement of oil and gas lease W 37489. ^{1/}

Noncompetitive oil and gas lease W 37489 was issued effective January 1, 1973, to Archie Albright whose drawing entry card was drawn with first priority for parcel No. 57 in the October 1972 simultaneous filing program in Wyoming. The lease consisted of NW 1/4 NW 1/4, sec. 17, T. 40 N., R. 74 W., sixth principal meridian, Wyoming, 40 acres, in Converse County. Effective September 1, 1973, an undivided half interest in the lease was assigned to Jack J. Grynberg. The lease was committed to the Spearhead Ranch Unit Agreement August 9, 1974, and was eliminated from the unit agreement effective November 21, 1980. During the time the lease was committed to the unit agreement, annual rental was paid to the Oil and Gas Supervisor, Geological Survey, Casper, Wyoming. After elimination from the unit agreement, rental payments were to be made to BLM.

^{1/} The case record shows lease W 37489 to be held in equal shares by Archie Albright and Jack J. Grynberg.

Appellant states that check for the rental due January 1, 1982, was prepared by its lease servicing agency in October 1981, but the check named the U.S. Geological Survey as payee. Upon review, and before mailing, the incorrect payee was noted and a new check was manually prepared November 12, 1981, and on the same day, mailed to BLM by certified mail item P 23 5646251. The employee who handled rental payments was newly hired in January 1982, so no one initiated any inquiry into the disposition of the check mailed November 12, 1981, until early in March 1982. At that time, a duplicate check was sent to BLM and the Postal Service was asked to report the disposition of certified mail item P 23 5646251. BLM has no record of receipt of this certified item and the Postal Service cannot show its disposition. As the envelope has not been returned to the sender nor delivered to the addressee, the Postal Service surmises the envelope was destroyed in some canceling action.

Appellant states that failure to tender the rental check within 20 days of the due date was not intentional nor through any lack of diligence. He contends that he must receive a Notice of Termination before the lease may be terminated for nonpayment of rental, citing 43 CFR 3108.2-1(c)(1)(iii).

[1] We must affirm the BLM action, as we are without authority to reinstate this lease. The applicable statute, 30 U.S.C. § 188(c) (1976), provides that upon failure of a lessee to pay rental on or before the anniversary date of the lease for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law. This is restated in 43 CFR 3108.2-1(a).

Notwithstanding the efforts of appellant to pay the rental timely, as evidenced by the use of certified mail to transmit the rental check some 6 weeks before the due date, the Department has no authority to reinstate an oil and gas lease terminated for failure to pay the rental timely unless the rental has been paid or tendered at the proper office of the Department within 20 days of the due date, and is precluded by law from granting reinstatement in any case where this condition has not been met. 30 U.S.C. § 188(c) (1976), 43 CFR 3108.2-1(c)(1)(i). Mobil Oil Corp., 35 IBLA 265 (1978); Vern H. Bolinder, 30 IBLA 26 (1977); A. E. White, 28 IBLA 91 (1976); Edward Malz, 24 IBLA 251 (1976).

Appellant did not pay the rental on this lease until March 5, 1982, more than 2 months after the anniversary date of January 1, so therefore the Department is without authority to consider the application for reinstatement.

Although the check for payment of the rental was mailed in sufficient time to satisfy the statutory requirement, the payment was not received by BLM. Placing a check for payment of the annual rental on an oil and gas lease in the mails does not constitute payment. 43 CFR 1821.2-2(f). Because appellant did not make payment of the rental due, as defined by the regulations, prior to the date for doing so, his lease terminated automatically. Moreover, because he neither made nor tendered payment prior to 20 days after the due date, we are without authority to consider his petition for reinstatement of this lease.

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.

Douglas E. Henriques
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

