

VICTORY LAND AND EXPLORATION CO.

IBLA 82-444

Decided July 20, 1982

Appeal from decision of the Montana State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease M 38310.

Affirmed.

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

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental is either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

2. Oil and Gas Leases: Reinstatement

Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee as the holder of record of the lease, and not the potential assignee, may petition to have the lease reinstated on the grounds that reasonable diligence was exercised or that the late payment was justified.

APPEARANCES: Kenneth T. Jarvi, Esq., Great Falls, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Victory Land and Exploration Company (Victory) appeals from the January 6, 1982, decision of the Montana State Office, Bureau of Land Management (BLM), denying reinstatement of oil and gas lease M 38310, terminated effective December 1, 1981, for failure to pay rental timely. The rental was due on December 1, 1981, but was not submitted until December 2, 1981, by Victory. A. K. Guthrie is the holder of record of the lease. An application for assignment of the lease from Guthrie to Victory had been filed but has not been approved. Because the petition for reinstatement was filed by Victory, not by Guthrie, the decision noted that the applicable regulation, 43 CFR 3108.2-1(c), requires a showing that the failure to make timely payment was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. The decision further noted that until the assignment was approved, Guthrie, not Victory, remained responsible for performance of any and all obligations as if no assignment had been executed. The decision further held that Victory had not submitted sufficient proof to support its contention that reasonable diligence was exercised or that failure to make timely payment was justifiable.

[1] An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities terminates by operation of law 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). Because the rental payment was not received on December 1, 1981, the due date, the lease terminated automatically. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the lessee shows that a 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). The petition filed by Victory does not allege that the failure to pay the rental timely was justifiable or not due to a lack of reasonable diligence on the part of Guthrie. Rather, the reasons given in the petition and this appeal relate to Victory's efforts to make timely payment.

[2] In Grace Petroleum Corp., 62 IBLA 180 (1982), the Board ruled that where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the lessee who is holder of record of the lease, and not the potential assignee, may petition to have the lease reinstated on the ground that reasonable diligence was exercised or that late payment was justified. There are two statutory bases for this holding. Under 30 U.S.C. § 188(c) (1976), as noted above, a terminated lease may be reinstated only if the failure to make timely payment "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." (Emphasis added.) Furthermore, the statutory provision governing assignments, 30 U.S.C. § 187a (1976), states that until approval of an assignment, "the assignor or sublessor and his surety shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed." Thus, under the holding of Grace Petroleum Corp., supra, it is not relevant whether Victory's efforts to make timely payment of the

rental constituted reasonable diligence or justifiable delay. 1/ The holder of record of the lease did not file a timely petition for reinstatement, and there is no allegation that any action by Guthrie would meet the requirements for reinstating the 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.

Edward W. Stuebing
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge.

1/ Even if Victory's activity could be considered legally relevant, it would provide insufficient basis for granting reinstatement. The payment that BLM received on Dec. 2, 1981, was not transmitted until Dec. 1, 1981. Transmitting the payment on the due date does not constitute reasonable diligence. See Max W. Young, 60 IBLA 224 (1981). Appellant asserts that it sent a check on Nov. 23, 1981, sufficiently in advance of the due date to assure timely payment in a normal course of delivery. A copy of a check dated Nov. 23, 1981, is enclosed with appellant's statement of reasons. However, the Board has held in many cases that the date on a rental check is not sufficient to corroborate the asserted date of mailing. E.g., David W. Gregg, 32 IBLA 293 (1977). Aside from the affidavit of the person who drew the check, no corroborative evidence of mailing has been submitted. There is no evidence that the check was received by BLM.

In Max W. Young, supra, the Board reviewed a number of decisions concerning the nature of satisfactory evidence required to corroborate a lessee's assertion that he mailed the rental payment on a particular date. In Young, the payment was received, but there was a conflict between the date affixed by a private postage meter and the official United States postmark. Despite the lessee's personal affidavit that he made the payment on the date indicated by the private postage meter, we noted that additional corroboration is properly required because of the potential ability of a user of a private postage meter to apply any postmark date convenient for his purposes, citing Lindemood v. Commissioner, 566 F.2d 646 (9th Cir. 1977).

