

FRED M. GARRETT, APPELLANT
ROBERT E. DEFFENBAUGH, RESPONDENT

IBLA 82-795

Decided July 26, 1982

Appeal from decision of Montana State Office, Bureau of Land Management, dismissing a protest against issuance of an oil and gas lease to the first-drawn applicant in the November 1981 simultaneous filing program. Parcel MT 104, M 53839 (ND).

Affirmed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

An application for oil and gas lease filed in the simultaneous leasing program signed on behalf of the applicant by an agent using only her surname was adequate compliance under the regulations in effect in November 1981.

2. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

The 15-day period set out in 43 CFR 3102.2-6(b) for submission of the uniform agreement and list of names and addresses of simultaneous oil and gas lease applicants utilizing a leasing service for assistance in filing commences at the close of the simultaneous filing period, not at the time of actual filing of the applications, as all applications received during the simultaneous filing period are considered as received at the last minute of the filing period.

APPEARANCES: R. Hugo C. Cotter, Esq., Albuquerque, New Mexico, for appellant; Richard H. Bate, Esq., Denver, Colorado, for respondent.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Fred M. Garrett appeals the Montana State Office, Bureau of Land Management (BLM), decision of April 22, 1982, which dismissed his protest against issuance of oil and gas lease M 53839 (ND) to Robert E. Deffenbaugh, whose application was given first priority for parcel MT 104 in the November 1981 simultaneous drawing. The Deffenbaugh application was filed with assistance from Leland Capital Corporation (Leland). Garrett had charged noncompliance with the regulations in 43 CFR 3102.2-1(c), 43 CFR 3102.2-6, and 43 CFR 3112.2-1. BLM did not find any lack of compliance with the pertinent regulations and dismissed the protest.

Appellant now argues that there is no evidence that the lists required by 43 CFR 3102.2-6(b) 1/ were filed by Leland within the 15-day period prescribed by the regulation, and the evidence shows the lists were not so filed; that there was an attempt by Leland to comply with 43 CFR 3102.2-1(c), but it was improperly done and the Deffenbaugh application is incomplete; that the Deffenbaugh application was not signed in compliance with 43 CFR 3112.2-1(b); and that the address shown on the application may not be the correct residence or business address of Robert E. Deffenbaugh.

In his answer, Deffenbaugh contends that the lists required by 43 CFR 3102.2-6(b) must be filed within 15 days after the closing date of the simultaneous filing period; that his application was complete because Leland complied with 43 CFR 3102.2-6(b), and so was not required to comply also with 43 CFR 3102.2-1(c); that Joyce E. Hauerwas was an employee of Leland at the time she signed and filed his application and at all later pertinent times; that the signature on the application comports with the regulatory requirements; and that the application bore the personal address of Deffenbaugh when the application was filed in November 1981.

When the application was filed in November 1981, the regulation governing the signing of simultaneous oil and gas lease offers permitted the signature in a manner to reveal the name of the applicant, the name of the signatory and their relationship, giving as examples: Smith, agent, for Jones; or Jones, principal, by Smith, agent. An amendment to the regulations on February 26, 1982, 47 FR 8545, now requires the complete name of the

1/ This regulation states in pertinent part:

"(b) Where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section. A list setting forth the name and address of each such offeror or applicant participating under the agreement shall be filed with the proper Bureau of Land Management office not later than 15 days from each filing of offers, or applications if leasing is in accordance with Subpart 3112 of this title."

agent, giving examples: John Smith, agent, for Mary Jones; or ABC Corp., agent for Mary Jones, by John Smith. The application in question shows Robert E. Deffenbaugh as applicant, Leland CC, agent by Hauerwas. This manner of signature complied with the regulation in effect at the time of the filing. Authority of Joyce H. Hauerwas to sign oil and gas lease applications on behalf of Robert E. Deffenbaugh was certified by Leland as well as the fact that Joyce E. Hauerwas was an employee of Leland from October 1, 1981, to December 31, 1981.

The record shows that the list of applicants receiving assistance from Leland and a copy of the uniform agreement entered into between the applicants and Leland was filed with BLM December 8, 1981, the 15th day after the close of the November 1981 simultaneous filing period. Appellant has suggested that the 15-day period must run from the actual time of filing of the applications, not the close of the simultaneous period. The use of a simultaneous filing system is to make available to more persons the opportunity to obtain an oil and gas lease on Federal lands. For the purpose of the simultaneous filing system it is presumed that all applications are filed at the last minute of the filing period. "Simultaneous" as used in the regulations means not at the same instant but at substantially the same time. Cloyes v. Middlebury Electric Co., 66 A. 1039, 80 Vt. 109 (1907). The events may be substantially or relatively simultaneous without being absolutely so. Even though "simultaneously" means, strictly speaking, "at the same time," it is not always construed to require absolute synchronism from beginning to end. American Surety Co. v. Mosher, 64 P.2d 1025, 48 Ariz. 552 (S. Ct. Ariz. 1936). Thus, we hold that applications filed during the posted simultaneous filing period will not be considered as separate in time as a matter of law, but as simultaneous filings within the meaning of the regulations as of the last minute of the filing period. Therefore, the 15-day period set out in 43 CFR 3102.2-6(b) commences to run at the conclusion of the simultaneous filing period without any regard to the actual time of receipt of the applications by BLM within that period. Filing of the agreement and lists by Leland on December 8, 1981, was timely for the November 1981 simultaneous filings.

Appellant suggests that Deffenbaugh may have used an incorrect address in derogation of the regulation 43 CFR 3112.2-1(d) which requires the personal or business address of the applicant. Appellant stated he had sent a copy of his notice of appeal to Deffenbaugh at the address shown on the application, but the Postal Service delivered the letter to a different address. Deffenbaugh has submitted evidence that he moved from 13 Glencoe Drive, Chesterfield, Missouri, the address shown on the application, to 72 River Valley, Chesterfield, Missouri, on April 19, 1982.

Our review of the case record discloses no error by BLM in its decision dismissing the protest of Garrett.

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. The case file is remanded to the Montana State Office, BLM, with instructions to issue oil and gas lease M 53839 (ND) to Robert E. Deffenbaugh, all else being regular.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

