

ELIZABETH D. ANNE

IBLA 82-487

Decided August 10, 1982

Appeal from the decision of the Montana State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application M-51405.

Vacated and remanded.

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

Where a simultaneously-filed oil and gas lease application was rejected because BLM asserts that the applicant's filing service failed to provide a list of names and addresses of participating applicants for whom it served as agent, as required by 43 CFR 3102.2-6(a) (1981), the legal presumption of regularity which supports the official acts of Government officers will be treated as rebutted upon presentation of sufficient evidence to show that the list probably was received by BLM.

APPEARANCES: James D. Fornari, Esq., New York, New York, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Elizabeth D. Anne has appealed from the January 28, 1982, decision of the Montana State Office of the Bureau of Land Management (BLM) rejecting her simultaneous oil and gas lease application M-51405. Her application was drawn with first priority for parcel MT 59 in the May 1981 filing period; the drawing for which was conducted on June 11 and 12, 1981. The reason for BLM's rejection of her application was stated as follows:

Regulation 43 CFR 3102.2-6(b) provides [that] where there is a uniform agreement entered into between several applicants and an agent, the agent may submit a blank copy of their agreement along with a list setting forth the names and addresses of

each offeror or applicant participating under the agreement, in the proper BLM office not later than 15 days after filing the applications. "Proper BLM office" has been defined as the Bureau of Land Management Office having jurisdiction over the lands subject to the regulations where the term is used. In this instance, the Montana State Office.

Your application was completed by an agent, SARTEX ENERGY SERVICES, INC. Three identical blank copies of an Agent's Agreement were timely submitted, but they did not file in this office a list of applicants. Across the front of the Agreement, the following statement is printed: "Duly executed copies of this agreement are on file at the Bureau of Land Management-- Cheyenne, WY." You have failed to comply with any of the listed regulations.

The case file contains a blank copy of the standard "Agents Agreement" utilized by Sartex Energy Services, Inc. (Sartex) to contract for services with its client-applicants. It was received by BLM's Montana State Office on May 21, 1981. The fact that it is stamped with a notation to indicate that an executed copy was filed with BLM's Wyoming State Office is irrelevant provided that Sartex also timely filed in the Montana State Office a list of the names and addresses of participating applicants, as the regulation provides for the filing of a blank copy of the agreement in such circumstances, which was done in this case.

Appellant has provided a machine copy of a letter dated May 13, 1981, from Sartex to the Montana State Office, BLM, listing the names and addresses of four individuals, including appellant, who are covered by the Sartex agreement and participated in the May 1981 drawing in the Montana State Office. Appellant has also provided machine copies of three certified mail return receipt cards, each addressed to the Montana State Office and each signed by the same BLM employee to evince their receipt on May 15, 1981.

There is a legal presumption of regularity which supports the official acts of public officers in the proper discharge of their official duties. United States v. Chemical Foundation, 272 U.S. 1 (1926); Legille v. Dan, 544 F.2d 1 (D.C. Cir. 1976); H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). This rebuttable presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them has arisen in numerous appeals decided by this Board in cases where the timely filing of a document or remittance of a payment was essential to appellant's establishment or maintenance of a right. James G. Robinson, 60 IBLA 134 (1981), and cases therein cited. As we noted in H. S. Rademacher, supra at 156-57, 88 I.D. at 876:

The issue of what kind of evidence is sufficient to establish the filing of a document despite the absence from the appropriate file of such a document is one which has troubled

this Board previously. See David F. Owen, 31 IBLA 24 (1977) (with dissenting opinion). This Board has found the inference of non-filing drawn from the absence of the document from the case file to be effectively rebutted by a preponderance of evidence in those cases where appellant's assertion that the document was timely filed is supported by substantial corroborating evidence. Bruce L. Baker, * * * [55 IBLA 266 (1981)]; L. E. Garrison, [52 IBLA 131 (1981)]. In Bruce L. Baker, supra, the assertion that the document in issue was actually filed was supported by an affidavit setting forth in detailed chronological sequence the events surrounding the filing which affidavit in turn was corroborated by the dates of notarial seals and filing with the county recorder's office. In the L. E. Garrison case, supra, claimant's assertion that the document in issue had been filed with BLM was corroborated by an affidavit of a subsequent telephone conversation with a BLM employee who opened the mailing and acknowledged timely receipt of the required document. The phone conversation was in turn documented by a long-distance telephone bill reflecting the call. On the other hand, the Board has held that uncorroborated statements, even where placed in affidavit form, to the effect that a document was filed are not sufficient to overcome the inference of nonfiling drawn from the absence of the document from the file and the practice of BLM officials to handle properly filings of legally operative documents. See Lawrence E. Dye, [57 IBLA 360 (1981)] at 364; John Walter Starks, [55 IBLA 266 (1981)]; Metro Energy, Inc., 52 IBLA 369, 371 (1981); Charles J. Babington, 36 IBLA 107 (1978).

In the instant case, the submission of the machine copy of letter dated May 13, 1981, from Sartex to the Montana State Office would not, standing alone, constitute sufficient evidence to support a finding by this Board that the original was mailed to and received by BLM. However, the three return receipt cards do establish that BLM received three separate mailings from Sartex on May 15, 1981. While this is far from conclusive proof that the letter was included among those deliveries, we regard it as sufficient corroboration to overcome the "presumption of regularity." There were only a limited number of documents which Sartex had reason to file with the Montana State Office in May of 1981 in connection with its filing of the four oil and gas lease applications, and because the blank copy of the "Agent's Agreement" was not noted as received by BLM until May 21, 1981, there is evidence that four separate mailings from Sartex were received by the Montana State Office within the span of 5 days during that month. We conclude, therefore, that it is more probable than not that the letter of May 13, 1981, was included among those deliveries.

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

from is vacated and the case is remanded to the Montana State Office, BLM, with instructions to issue the lease to the appellant if all else be regular.

Edward W. Stuebing
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

