

BRIAN D. HAAS

IBLA 81-888

Decided August 27, 1982

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application. M 49510.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Filing--Regulations: Applicability

Where an applicant is to be deprived of a statutory right because of a failure to comply with the requirements of a regulation, that regulation should be so clearly set forth that there is no basis for noncompliance.

APPEARANCES: Brian D. Haas, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Brian D. Haas has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated June 19, 1981, rejecting his simultaneous oil and gas lease application, M 49510, drawn with first priority for parcel MT 9 in the November 1980 simultaneous oil and gas lease drawing. BLM rejected appellant's application because appellant failed to pay the first year's rental in accordance with 43 CFR 3112.4-1(a). The rental was not paid by appellant or his attorney-in-fact, but by Warren R. Haas, who was subsequently identified as Brian Haas' father. The decision states: "We have no record of a power of attorney being filed for Warren R. Haas which would give him the authority to pay the first year's rental."

In his statement of reasons for appeal, appellant, a college student, states that the first year's rental was paid by his father, under a personal arrangement, in which he would pay back his father for the advance of funds. Appellant notes that his father "has absolutely no interest in the leases I win."

[1] The applicable regulation, 43 CFR 3112.4-1(a), provides in relevant part: "The first year's rental shall be paid only by the applicant, or his/her attorney-in-fact * * *."

The instant regulation, 43 CFR 3112.4-1(a), was issued, effective June 16, 1980, pursuant to final rulemaking which revised the simultaneous oil and gas leasing system. See 45 FR 35156 (May 23, 1980). The preamble to the final rulemaking explained the rationale for adding a requirement that the first year's rental be paid by the applicant or his/her attorney-in-fact:

Section 3112.4-2 of the proposed rulemaking, renumbered section 3112.4-1 in the final rulemaking, required that the lease offer be signed and the first year's rental be submitted by the lease applicant in order to increase an applicant's involvement and reduce the influence of agents in the process. Many of the comments approved this change. Some, however, found the change to be an undue burden upon applicants. In order to provide greater flexibility for the leasing system, the final rulemaking has been changed to allow an attorney-in-fact to sign the offer and submit the first year's rental if the requirements of the section are followed. [Emphasis added.]

45 FR 35159 (May 23, 1980). Furthermore, 43 CFR 3112.6-1(d) provides that "[t]he application of the first qualified applicant shall be rejected if an offer is not filed in accordance with § 3112.4-1 of this title."

The regulation requires that the first year's rental be paid by the applicant. The regulatory preamble suggests that it must be submitted by the applicant. Not only are these discrete concepts partaking of differing meanings, but both terms are individually capable of numerous variant definitions. Thus, "paid by the applicant" could be construed to require that the funds must come from the applicant's personal resources, thereby prohibiting the submission of borrowed funds, however obtained. Tender of a personal check drawn on funds already deposited might be deemed "paid" under such a definition.

On the other hand, "paid by the applicant" could merely require that the applicant personally tender funds of which he was either already possessed or which he had borrowed with an obligation to repay. If an individual wrote a personal check on an account in which there were insufficient funds on deposit to cover the check, but for which there existed an agreement providing for an automatic loan extension by the bank, the individual could be deemed to have "paid" the rental under this definition, though he or she would not have "paid" the rental under the first definition.

Alternatively, the term "paid by the applicant" could embrace a definition that the actual payment need not be made by the applicant directly so long as he has either recompensed the payor or obligated himself to recompense the payor. Thus, since a cashier's check is actually an obligation of the issuing bank, submission of a cashier's check actually could be treated as payment by the bank rather than the applicant, despite the fact that the applicant purchased the check. Thus, this definition would permit acceptance of cashier's checks which might otherwise, albeit inadvertently, run afoul of the regulation. Clearly, in this case if appellant's father had obtained a

cashier's check and forwarded it to BLM without explanation, BLM should have considered the rental paid by the applicant.

Then, too, it could be argued that the term "paid by the applicant" simply means that the applicant must personally submit the payment and, therefore, it is irrelevant how the payment is made so long as the applicant "submits" it. This definition has the obvious advantage of tracking with the regulatory preamble. It also has an obvious disadvantage in that the term "submit" is as ill-defined as "paid."

The term "submitted by the applicant" could mean transmitted by the applicant or transmitted either by the applicant or at his or her direction. Thus, if an applicant addresses an envelope, affixes the postage, and deposits it in a mail receptacle, the applicant has clearly "submitted" the rental. On the other hand, if the spouse of an applicant performs these functions the rental has been submitted by the applicant only if the term "submitted by the applicant" includes actions done at his or her direction or request. If this latter definition is used, however, we have come full-circle, for it is clear that any third party could submit the payment so long as it is done at the behest or request of the applicant, and the whole purpose of the regulation would be vitiated. But, if we reject the expansive definition of "submit" we are left with the equally ludicrous result that the mere fact that someone other than the applicant deposits payment in the mailbox may be sufficient to violate the regulatory language.

This Board has traditionally enforced all Departmental regulations, regardless of any questions which may have arisen as to their efficacy, so long as the regulations were duly promulgated. But a prerequisite to enforcement is the existence of a discernible rule which can be rationally enforced. Neither the language of the regulation nor the explanatory preface can fairly be said to provide such guidance. As this Board has noted many times, "where an applicant is to be deprived of a statutory right because of his failure to comply with the requirements of a regulation, that regulation should be so clearly set forth that there is no reasonable basis for noncompliance." Georgette B. Lee, 3 IBLA 272, 276 (1971). See also Ross L. Kinnaman, 48 IBLA 239 (1980). Appellant herein should not be penalized for failing to comply with a regulatory prescription where it is virtually impossible to ascertain exactly what is proscribed. Thus, we must reverse the decision of the State Office. 1/

1/ BLM also noted a discrepancy between appellant's signatures on the applications, the lease forms, and previously filed applications. The applicable regulations, 43 CFR 3112.2-1(b) and 3112.4-1(a) require that the signature on the application and the lease forms be the personal handwritten signature of the applicant or his attorney-in-fact. Failure to abide by either regulation will result in rejection of the application. 43 CFR 3112.6-1(a) and (d). BLM, however, did not base its rejection on this consideration, and we will not consider it here. BLM, however, is free to reexamine this question on remand if it is unsatisfied with appellant's explanation.

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 reversed and the case file remanded for further action not inconsistent herewith.

James L. Burski
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge

