

KRISTIE R. COBB

IBLA 82-688

Decided September 9, 1982

Appeal from a decision of the California State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease CA 6517.

Affirmed.

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

A check which is negotiable by a party other than the Bureau of Land Management does not constitute timely payment of lease rental, even if received prior to the anniversary date of the lease.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

Where the Bureau of Land Management returns on the fourth working day following receipt an oil and gas lease rental check which is not negotiable by it, it has acted with reasonable dispatch, and the lease terminates automatically by law when a substitute check is not received until after the anniversary date.

3. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:  
Termination

An oil and gas lease terminated automatically for untimely payment of rental may be reinstated upon proof that reasonable diligence was exercised. Mailing

payment to the Bureau of Land Management after it is due does not constitute reasonable diligence.

4. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Termination

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. Inadvertently sending, prior to the anniversary date, a rental check which is not negotiable by the Bureau of Land Management is not a circumstance outside the control of the lessee and does not justify a subsequent late payment of rental.

APPEARANCES: Lynn J. Farnworth, Esq., Moscow, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

On February 1, 1982, the California State Office, Bureau of Land Management (BLM), issued a notice of oil and gas lease termination informing Kristie R. Cobb that her lease CA 6517 had terminated automatically pursuant to 30 U.S.C. § 188(b) (1976), for failure to pay the annual rental on or before January 4, 1982. <sup>1/</sup> The notice informed Cobb that the rental had been received January 11, 1982.

Petition for reinstatement of CA 6517 was filed with BLM on February 8, 1982. By decision dated March 12, 1982, BLM denied the petition for reinstatement, and this appeal followed.

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates 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). A terminated lease can be reinstated only if, among other requirements, the lessee shows that the 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).

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<sup>1/</sup> The anniversary date of the lease was Jan. 1, 1982. Jan. 1 was a holiday, Jan. 2 a Saturday, and Jan. 3 a Sunday. Therefore, rental for 1982 was due on or before Jan. 4, 1982.

On December 28, 1982, BLM received a check dated December 5, 1982, for the amount of \$588. Notation on the face of the check indicated it was for "CA 6517." The anniversary date of lease CA 6517 was January 1, 1982. The payee of the check, however, was the "Wyo. Commissioner of Public Lands." BLM returned the check to the sender by Notice of Return of Remittance dated January 4, 1982, indicating that "[t]he remittance is negotiable by a party other than the Bureau of Land Management." Following receipt of that notice, proper payment for CA 6517 was mailed January 7, and received by BLM on January 11, 1982. In the petition for reinstatement which was filed by Paul H. Landis it was explained that: "I handle such routine [rental payments] for family members, and the grandchildren keep on file with me signed check[s] on their local account for both BLM and Wyoming Commissioner of Public Lands rentals. I inadvertently sent you one made out to the commissioner."

BLM denied the petition stating that the check with the Wyoming Commissioner of Public Lands as the payee was not negotiable by BLM and, as such, could not be considered payment of the lease rental; that proper payment was not mailed until after the due date; and that simple inadvertence is neither justifiable nor the result of reasonable diligence.

On appeal counsel for Kristie R. Cobb argues that proper payment was made on December 28, 1981, and that the burden is on BLM "to prove by documentary evidence" that the check received on December 28, 1981, was improper. This argument is apparently based on some idea by counsel that BLM has not retained sufficient evidence to establish that the payee of the check received December 28, 1981, was other than BLM. Counsel directs our attention to cases in which we have pointed out that retention of envelopes and other evidence is critical to fair adjudication of petitions for reinstatement.

[1] This argument is incomprehensible. BLM admits that it received a check on December 28, 1981. The petitioner for reinstatement admitted that the Wyoming Commissioner of Public Lands was the payee of that check. The case record contains a copy of that check. The check was not negotiable by BLM. Such a check does not constitute timely payment, even when, as in this case, it was received by BLM prior to the anniversary date of the lease. Cf. C. J. Streit, 44 IBLA 285 (1979) (an unsigned check timely received by BLM held not to constitute timely payment of rental since such a check is not a negotiable instrument).

Counsel next urges that the result in this case should be controlled by the rationale in our decision Richard L. Rosenthal, 45 IBLA 146 (1980). In Rosenthal annual rental was erroneously sent to the wrong BLM state office 2 weeks in advance of the anniversary date; however, the Board found that this initial error attributable to Rosenthal was compounded by the delay of the BLM state office in either returning the payment or forwarding it to the proper office. The BLM state office delayed 2 weeks in forwarding the payment to the proper state office. The Board found that the negligence of the BLM

employees was an equally causative factor in the lessee's failure to pay timely and granted reinstatement.

Counsel states that the facts in the present case "show that the Lessee tendered payment of the annual rental thirteen days in advance of the anniversary date" (Statement of Reasons at 2). This assertion is clearly erroneous. BLM received the first check on December 28, 1981. Rental was due on or before January 4, 1982.

[2] We are not persuaded that the reasoning in the Rosenthal case is applicable to the facts in this case. BLM received the first check in this case on December 28, 1981, only a few days before the anniversary date of the lease. In Rosenthal the check arrived 2 weeks before the anniversary date, and the Board found the delay by BLM unjustified. We can make no such finding herein. In fact, in Rosenthal the Board stated that "we feel this Board must recognize the Department's obligations to react to erroneous actions of members of the public with reasonable dispatch." Id. at 148. Clearly, BLM acted with reasonable dispatch in this case when it returned the check on the fourth working day following its receipt. Appellant cannot shift the responsibility for her untimely payment by claiming that BLM failed to take action in a timely manner.

[3] Since proper payment of the rental was mailed January 7, and received January 11, 1982, appellant cannot be considered to have exercised reasonable diligence. Reasonable diligence requires mailing the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). Mailing the rental payment after the due date does not constitute reasonable diligence. Robert S. Hughes, 66 IBLA 304 (1982); David E. Cooley, Jr., 62 IBLA 87 (1982).

[4] A failure to make timely payment may be justifiable, however, if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. International Resource Enterprises, Inc., 55 IBLA 386 (1981); see Ramoco, Inc. v. Andrus, 649 F.2d 814 (10th Cir. 1981); see also Martin Mattler, 53 IBLA 323, 88 I.D. 420 (1981). Simple inadvertence on the part of the lessee or the agent entrusted by the lessee with making payment does not justify late payment. Martin Mattler, supra; Benjamin T. Franklin, 38 IBLA 291 (1978); Gretchen Capital, Ltd., 37 IBLA 392 (1978); Louis Samuel, 8 IBLA 268 (1972). Inadvertently sending, prior to the anniversary date, a check which is not negotiable by BLM is not a circumstance outside the control of the lessee and does not justify a subsequent late payment of the rental.

BLM properly denied the petition for reinstatement.

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 affirmed.

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Bruce R. Harris  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Gail M. Frazier  
Administrative Judge

