

WALTER ADOMKUS

IBLA 82-901

Decided September 21, 1982

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting simultaneously filed oil and gas lease application M-53789.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings

A simultaneously filed oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period, since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period, and since the applicant must bear the responsibility for any error in the dating of the application.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Filing

The 15-working-day filing period for a simultaneously filed oil and gas lease application is rigid; strict adherence thereto establishes fairness and uniformity for all participants, and BLM's strict enforcement thereof is not arbitrary or capricious.

3. Notice: Generally -- Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

APPEARANCES: John B. Lowy, Esq., New York, New York, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Walter Adomkus has appealed the decision of the Montana State Office, Bureau of Land Management (BLM), dated May 17, 1982, rejecting his simultaneously filed oil and gas lease application M-53789 because its date did not reflect that it was signed within the filing period. Appellant's application was dated November 1, 1981. The subject parcel was posted for filing from November 2 to November 23, 1981.

The current regulation, 43 CFR 3112.2-1(c), reads in part, "The application shall be dated at the time of signing. The date shall reflect that the application was signed within the filing period." (Emphasis added.)

[1] It is well established that a drawing entry card which is not properly dated in the space provided on the card must be rejected. Sorensen v. Andrus, 456 F. Supp. 499 (D. Wyo. 1978), aff'g, Walter M. Sorensen, 32 IBLA 345 (1977). Since promulgation of the current 43 CFR 3112.2-1(c), ^{1/} this Board has consistently held that an application, such as appellant's, that bears a date prior to the filing period violates the requirements for filing and is properly rejected. E.g., Leonard Thompson, 62 IBLA 236 (1982); Herbert W. Winston, 61 IBLA 199 (1982). Strict compliance with the requirements of 43 CFR Subpart 3112 is enforced in order to protect the rights of other qualified applicants. Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). Appellant's entry card application was properly rejected for noncompliance with the filing procedures.

[2] Appellant's application was dated November 1, 1981, a Sunday. Appellant argues that his application was timely filed and should be deemed dated November 2, 1981. Appellant relies upon a principle, which he describes as axiomatic, that when a document is dated on a Saturday, Sunday, or legal holiday, it is dated the next business day. However, appellant cites no authority for this "axiom" or "rule," and it appears that no such rule exists which would apply in these circumstances.

The courts give efficacy to acts performed on statutory and legal holidays unless constrained to do otherwise by the terms or the necessary effect of a statute. At common law, and in the absence of any statutory provision to the contrary, private contracts, acts, and transactions executed on Sunday are valid and effective on that day. Where statutes declare in express terms that the making of contracts, the signing of notes or the execution of other instruments are invalid acts when accomplished on Sunday, such contracts or instruments are often regarded as void rather than valid on the next business day, as urged by appellant. See 74 Am. Jur. 2d Sundays and Holidays § 70 (1974); 83 C.J.S. Sunday § 27 (1953). In any event, appellant has failed to make any showing that his execution and dating of the application form on a Sunday prior to the filing period is distinguishable in legal effect from an execution and dating of that form on a regular week-day prior to the filing period.

There is a rule which results from the Sunday closing or "blue" laws and applies where the last day of the computed period for performance falls

^{1/} See 45 FR 35163 (May 23, 1980), as amended, 46 FR 45887 (Sept. 15, 1981). Cf. 43 CFR Subpart 3112.2 (1976).

on a day of closing. See 74 Am. Jur. 2d Time §§ 13-19 (1974). The rule's underlying purpose is to provide reasonable flexibility so that prejudice might not thereby result. See Kirby v. United States, 479 F. Supp. 863 (D.S.C. 1979). Appellant should note that the rule, as it pertains to filing periods, is limited to where it is expressly adopted and where there is to be an extension of the last day of the period in which the act is to be performed. See 74 Am. Jur. 2d Time, supra at §§ 17-19; Kirby v. United States, supra. The Department has incorporated that rule into its regulations. 43 CFR 1821.2-2(d); 43 CFR 4.22(e).

Appellant's argument to expand the first day of the filing period does not comply with the very rule he argues, nor do the regulations allow for flexibility in the time allowed for filing applications. 43 CFR 3112.2-1 expressly provides that the filing period shall be "at the start of business on the first working day" of the designated month until "the close of business on the fifteenth working day thereafter." The reason the applicant must date the application within the filing period is to establish that his or her statement of qualifications found on the entry card is accurate at the time it is actually filed. See Lynn C. Haas, 62 IBLA 25 (1982). The policy for a date of signing contemporaneous with the filing period is codified in the requirement of 43 CFR 3112.2-1(c) that "the date shall reflect that the application was signed within the filing period." With the number of entry cards filed on particular parcels often numbering in the thousands, strict adherence to each requirement establishes fairness and uniformity for all participants. To extend the filing period so that appellant may remedy his application would prejudice all other applicants who have properly prepared and filed their applications.

Applicant also contends that BLM's rejection of this application was arbitrary and capricious so far as it is contrary with the 10-day rule established in Kathryn J. Eckles, 28 IBLA 390 (1977). In Eckles, the applicants dated their simultaneously filed oil and gas lease application prior to the filing period. The rejection of their entry card was reversed because the date affixed thereto was within 10 days prior to the filing period. The decision to apply a 10-day grace period was based upon the fact that no specific requirement then existed for the dating of entry cards, and upon the impracticability of strict adherence when the filing period was limited to only 5 days.

The regulations, however, have changed since the Eckles decision, and reflect a change in policy. Cf. 43 CFR 3112 (1976). The filing period was extended "from 5 to 15 working days in order to overcome the difficulties some participants experienced in meeting the 5 day requirement." 45 FR 35156, 35159 (May 23, 1980). The requirement that the date reflect that the application was signed within the filing period was added. 45 FR 35160, 35163 (May 23, 1980). BLM properly rejected appellant's application for noncompliance with section 3112.2. It would have been arbitrary and capricious for BLM not to abide by the mandatory regulations.

[3] Appellant argues that there was no notice given by BLM that a failure to properly date the application would result in the rejection of such offer. That argument is without merit. Charles Y. Neff, 64 IBLA 234 (1982). Appellant, as a person dealing with the Government, is presumed to have knowledge of relevant statutes and duly promulgated regulations.

Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); 44 U.S.C. §§ 1507, 1510 (1976). Such regulations have the force and effect of law and are binding on the Department. Martha E. Ehbrecht, 62 IBLA 387 (1982); 2/ Bernard P. Gencorelli, 43 IBLA 7 (1979). Thus, the clear directives of a regulation cannot be disregarded on the basis of appellant's allegation that such a regulation may have been inconsistently applied by BLM. See Trans-Texas Energy, Inc., 56 IBLA 295 (1981). Appellant was on notice and should have been aware of the regulatory requirements published in the Federal Register on May 23, 1980.

An applicant bears the responsibility for any error in the dating of the application. Leonard Thompson, supra. 43 CFR 3112.6-1 is clear notice to applicants of the necessary compliance with section 3112.2. What may seem nitpicking and excessively strict to one applicant may appear essential to a conflicting applicant who has fully met the requirements, with any other result unfair, and contrary to the regulations.

Appellant has failed to establish any reason for a departure from the mandatory requirements of the regulations.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Douglas E. Henriques
Administrative Judge

2/ Appeal pending. Ehbrecht v. Department of the Interior, Civ. No. 82-1329 (D.D.C. May 13, 1982).

