

LEONARD STEGMAN

IBLA 82-448

Decided November 22, 1982

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease application. N 35042.

Affirmed.

- 1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: First-Qualified Applicant

An oil and gas lease application, form 3112-1 (September 1981), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered and applicant's failure to check these items on the form cannot be cured where the rights of the second-drawn applicant have intervened.

APPEARANCES: Stephen F. Pellino, Esq., Ridgefield, New Jersey, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Leonard Stegman has appealed from the January 7, 1982, decision of the Nevada State Office, Bureau of Land Management (BLM), which rejected his simultaneously-filed noncompetitive application for oil and gas lease N 35042. Appellant's application was drawn first for parcel NV-21 in the November 1981 drawing held on December 9, 1981. BLM rejected the application because appellant failed to answer questions (d) through (f) on the reverse side of the application card.

The uncompleted portion of the application appears as follows:

UNDERSIGNED CERTIFIES AS FOLLOWS (check appropriate boxes):
 [Original in italics.]

* * * * *

(d) Does any party, other than the applicant and those identified herein as other parties in interest, own or hold any interest in this application or the offer or lease which may result? Yes No

(e) Does any agreement, understanding, or arrangement exist which requires the undersigned to assign, or by which the undersigned has assigned or agreed to assign, any interest in this application, or the offer or lease which may result, to anyone other than those identified herein as other parties in interest? Yes No

(f) Does the undersigned have any interest in any other application filed for the same parcel as this application? Yes No

Appellant contends on appeal that the omission was merely an oversight. With his statement of reasons he attached an affidavit providing his responses to questions (d), (e), and (f), answering "No" in each case. Appellant argues that no regulation specifically requires that (d), (e), or (f) be answered. Appellant states that his failure to answer the questions should be excused because any deficiencies in his application were purely procedural and because he has now shown himself qualified to hold a Federal oil and gas lease.

[1] Under the Mineral Leasing Act, the Department of the Interior is authorized to issue a noncompetitive oil and gas lease only to the first qualified applicant. See 30 U.S.C. § 226(c) (1976). The Department promulgated regulations that provide for the simultaneous filing of applications to be drawn for consideration. 43 CFR Subpart 3112. We have consistently required strict compliance with the requirements relating to lease applications, and failure to complete any part of an application will disqualify an applicant. See Sorensen v. Andrus, 456 F. Supp. 499, 501 (D. Wyo. 1978).

The applicable regulations require rejection of the application. 43 CFR 3112.2-1(a) requires that an application be "completed, signed and filed pursuant to the regulations of this subpart." (Emphasis added.) 43 CFR 3112.6-1(a) provides that any application not filed in accordance with section 3112.2 shall be rejected. This Board has consistently held that an oil and gas lease application is not completed in accordance with 43 CFR 3112.2-1 or the explicit instructions on the application itself where questions (d) through (f) are left unanswered. E.g., James E. Webb, 60 IBLA 323 (1981); Clyde K. Kobbeman, 58 IBLA 268, 88 I.D. 915 (1981) (appeal pending: Estate of Kobbeman v. United States, Civ. No. 82-0774 (D.D.C., filed Feb. 23, 1982)); Vincent M. D'Amico, 55 IBLA 116 (1981), appeal dismissed, D'Amico v. Watt, Civ. No. 81-2050 (D.D.C., Aug. 31, 1981). Those cases explain that answering questions (d) through (f) are distinct aspects of the application and require a response on the application itself.

The applicant's failure to check the appropriate box in response to each of the questions created defects in the application that are far from trivial. The answers to the questions relate directly to the applicant's

qualifications to receive a lease. The failure to disclose a party in interest to the lease application (question (d)) violates the regulation at 43 CFR 3102.2-7 (1981); assignment of an interest in the lease application (question (e)) prior to lease issuance or lapse of 60 days after determination of priority is a violation of 43 CFR 3112.4-3; and any interest of an applicant in more than one application for the same parcel (question (f)) would disqualify the applicant under 43 CFR 3112.6-1(c). Failure to check an answer to each question creates a serious defect in the certification required by the application. John F. Jacobs, 66 IBLA 219 (1982); Jake Huebert, 59 IBLA 179 (1981).

Appellant's defective simultaneous oil and gas lease application cannot be cured on appeal, because to do so would infringe on the intervening rights of the second and third drawn applicants. Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976).

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 Nevada State Office is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge

