

FEN F. TZENG

IBLA 82-1334

Decided November 23, 1982

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting simultaneously filed noncompetitive oil and gas lease offer, CA 12850.

Affirmed.

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

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) are left unanswered, and therefore, must be rejected.

2. Notice: Generally -- Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations, and are not entitled to rely on interpretations thereof used in another state office.

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

Inclusion of a defective application in a drawing does not bar rejection after the selection has been made.

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

A defective application for noncompetitive oil and gas lease submitted pursuant to

the simultaneous filing procedure is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of the second and third qualified applicants have intervened.

5. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: First-Qualified Applicant

A first-drawn application in a simultaneous filing procedure drawing is a noncompetitive offer to lease for oil and gas and does not create a property right in the offeror.

APPEARANCES: Fen F. Tzeng, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Fen F. Tzeng has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated August 10, 1982, rejecting her noncompetitive oil and gas lease offer, CA 12850, for failure to complete her simultaneously filed application form. Appellant's application was drawn with first priority for parcel number CA 545, included in the May 1982, drawing. BLM rejected her application because questions (d), (e), and (f) on the application (Form 3112-1 (September 1981)) had not been answered and, therefore, it had not been fully completed as required by 43 CFR 3112.2-1. 1/

In her statement of reasons, appellant presents several arguments.

(1) "Regulation 43 CFR 3112.2-1 is not a permanent rule * * *." It, therefore, is not a proper foundation to deny applicant's right to receive a lease.

(2) "To answer these questionnaires is not 'absolutely' necessary because" Form 3112-1 will be replaced in California by Form 3112-6a which

1/ Items (d) through (f) are a series of questions, each of which is followed by boxes to be checked "Yes" or "No" in response. The questions are:

"(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?

"(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?

"(f) Does the undersigned have any interest in any other application filed for the same parcel as this application? The introductory words to items (a) through (g) are as follows: "UNDERSIGNED CERTIFIES AS FOLLOWS (check appropriate boxes)."
(Original in italics).

does not require applicants to mark "yes" or "no". Form 3112-6a is now used in other state offices.

(3) "Form 3112-1 is itself defective * * * [and] obsolete because the questionnaire boxes are irrelevant * * *. Form 3112-6a does not contain the tiny questionnaire square boxes * * *."

(4) "Lack of uniformity in handling the official business by different state offices" is confusing.

(5) "The Bureau's California state office committed gross negligence * * *." If the application form was incomplete, BLM must preclude applicant's form from participation. BLM should have screened the cards before the drawing.

(6) "I have acquired a vested-in right and interest to obtain the lease * * *." It is contradictory for BLM to allow participation in the drawing and then deny the lease.

(7) "The California state office killed my opportunity to cure defects in my application: * * * We were told that we should have 15-days-after-the-filing period to correct any defect and make the application complete * * *." BLM held the application without the opportunity to cure the defects.

(8) "[I]t would do no harm to anybody if an oil/gas lease would be issued to me * * *."

We begin our answer to these contentions by observing generally that under the Mineral Leasing Act, the Department is authorized to issue a noncompetitive oil and gas lease only to the first-qualified applicant. See Udall v. Tallman, 380 U.S. 1 (1965); 30 U.S.C. § 226(c) (1976).

The Department has promulgated regulations that provide for the simultaneous filing applications to be drawn for consideration. 43 CFR Subpart 3112. "If the Secretary is to fulfill his obligation to lease to the first-qualified applicant, as strict a compliance with the regulations as possible is necessary." Shearn v. Andrus, No. 77-1228, slip op. at 6 (10th Cir. Sept. 19, 1977), quoted in Sorensen v. Andrus, 456 F. Supp. 499, 502 (D. Wyo. 1978). 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, supra at 501, and cases cited therein.

[1] Departmental regulation, 43 CFR 3112.2-1(a), provides in relevant part: "An application to lease under this subpart consists of a simultaneous oil and gas lease application on a form approved by the Director, Bureau of Land Management, completed, signed and filed pursuant to the regulations in 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 a simultaneously filed application is not complete in accordance with section 3112.2-1(a) or the explicit instructions on the application itself where questions (d) through (f) are left unanswered. Carol V. Miller, 66 IBLA 394 (1982); Dennis M. Joy, 66 IBLA 260 (1982); John F. Jacobs, 66 IBLA 219 (1982).

Questions (d) through (f) are included in a list of affirmative statements and questions on Form 3112-1 recognized as a certification of the applicant's qualifications with respect to that particular lease application. The failure to disclose a party in interest to the lease offer (question (d)) is a violation of the regulation at 43 CFR 3112.2-3 (47 FR 8545); the assignment of an interest in the lease offer (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 the applicant in more than one application for the same period (question (f)) disqualifies the applicant under 43 CFR 3112.6-1(c). Answering questions (d) through (f) are distinct aspects of the application and require a response on the application itself. Dennis M. Joy, supra. The Secretary is entitled to require such information as is necessary to ensure that an applicant for a lease is qualified. See Ken Wiley, 54 IBLA 367 (1981). The questions on the form serve that purpose. The failure to check the appropriate box in response to each question is simply noncompliance with the regulations and creates serious defects in the certification of an applicant's qualifications that are far from trivial. Carol V. Miller, supra; John F. Jacobs, supra. Appellant has not explained how she considers her qualifications to hold a lease to be verified without answering questions (d) through (f).

The rule requiring completion of the approved application form promotes the efficient administration of the simultaneous oil and gas leasing program in view of the number of applications submitted. Leroy G. Bourdeaux, 62 IBLA 255 (1982). ^{2/} The use of an approved form offers the elements of uniformity, essential to the processing of large numbers of documents. As we stated in William K. DuKate, 35 IBLA 51, 52 (1978):

The rationale for demanding preciseness of completion by offerors in simultaneous oil and gas drawings is sound. Faced with a great number of filings, the various BLM State Offices have a substantial administrative burden in processing not only the entry cards for oil and gas drawings, but also applications in other matters. Thus, it is necessary for each oil and gas offeror to perform the simple task of carefully filling out the boxes on his entry card if the Department is efficiently and accurately to fulfill its responsibility for administering the oil and gas leasing program. An offeror who fails to satisfy the Department's unburdensome filing demands cannot fairly expect that his offers will be accepted ahead of those later-drawn offers which have been filed with the requisite care.

[2] The California State Office used Form 3112-1 for the May 1982, drawing as the form approved by the Director. See 43 CFR 3112.2-1(a). Wyoming, Colorado, and Nevada were states approved at that time to use the newer application form. 47 FR 14487 (Apr. 5, 1982). ^{3/} Appellant, however, is not entitled to rely on forms or interpretations thereof used in another state office. Appellant, as a person dealing with the Government, is presumed to

^{2/} Appeal pending: Bondreaux v. Watt, No. 82-1328 (D.D.C. filed May 13, 1982).

^{3/} California is targeted for use of Form 3112-6(a) as the approved form beginning November 1982. 47 FR 40412 (Sept. 14, 1982).

have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). Such regulations have the force of law and are binding on the Department. Martha E. Ehbrect, 62 IBLA 387 (1982); ^{4/} Dr. Jose Trabal, 60 IBLA 97 (1981). ^{5/} Thus, the clear directives of a regulation cannot be disregarded on the basis of appellant's allegations that such a regulation may have been inconsistently applied by BLM. See Trans-Texas Energy, Inc., 56 IBLA 295 (1981). Appellant was on notice of the requirement that the approved form, 3112-1, used in California, must be completed.

[3] Appellant has no right to presume that she should receive a lease simply because her application was chosen first, since it should have been clear that she would not have a lease unless she was qualified and her application and offer were accepted by BLM. Robert M. Myers, 63 IBLA 100 (1982). The regulations make it abundantly clear that an application can be rejected even after selection. Betty J. Thomas, 56 IBLA 323 (1981). See Margaret A. Ruggiero, 34 IBLA 171 (1978).

Although failure to answer questions (d) through (f) is not expressly included among the defects listed in 43 CFR 3112.5, which sets forth criteria for screening application cards prior to a drawing, that omission does not mean BLM must accept appellant's application. Subsection (b) of that regulation notes that failure to identify a filing as unacceptable prior to selection does not bar rejection after selection for the reasons listed in that section or any reasons set forth in section 3112.6. As noted, section 3112.6-1(a) makes clear that an application will be rejected if not filed in accordance with section 3112.2 which requires that applications be "completed." We may not justify a departure in a single case from an otherwise consistent policy of rejecting applications that do not conform to the regulation. See McKay v. Wahlenmaier, 226 F.2d 35, 43 (D.C. Cir. 1955).

[4] Appellant refers to a right to cure her application. That right does not exist with reference to a simultaneously filed application. Giving an unqualified first-drawn applicant the opportunity to make an amended filing would infringe on the rights of the second-drawn, first-qualified applicant. See Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir.1976); accord Moss v. Andrus, Civ. No. 78-1050 (10th Cir., Sept. 20, 1978). In the simultaneous filing system, an applicant must establish its qualifications at the time of the filing. Impel Energy Corp., 64 IBLA 92 (1982). A defective application submitted pursuant to the simultaneous filing procedure is not curable by submission of required evidence after the drawing because an amendment is effective for lease offer purposes only from the time it is received and cannot relate back to the date of the filing. See John L. Messinger, 65 IBLA 20 (1982); Bryan O. Blevins, 63 IBLA 304 (1982). Applications received in the 15-working-day period set aside for filing applications are considered to have been simultaneously received on the last day allowed for filing. A drawing is held to determine the priority of applicants to receive a lease. See 43 CFR 3112.3-1(a). The applicant with the highest priority who is also qualified to receive a lease is

^{4/} Appeal pending: Ehbrect v. Watt, No. 82-1329 (D.D.C. filed May 13, 1982).

^{5/} Appeal pending: Trabal v. United States, No. 82-0450 (D.D.C. filed February 23, 1982).

the party to whom a lease is issued. See Sorensen v. Andrus, *supra*. To allow amendment of a defective application would prejudice the right of the junior offeror, whose priority attaches *eo instante* upon failure of the applicant having first priority to qualify. See Ballard E. Spencer Trust, Inc. v. Morton, *supra*.

Appellant states that she was informed by a BLM official that she could cure her application. Reliance upon information or opinion of any officer, agent, or employee cannot operate to vest any right not authorized by law. 43 CFR 1810.3(c); William J. McGrath, 62 IBLA 110 (1982).

[5] Appellant asserts a vested right to receive a lease because of her participation in the drawing and subsequent first-drawn position. As noted, the drawing is held to determine the order in which simultaneously filed applications will be considered. A first-drawn application is not automatic entitlement to a lease, but continues as a mere offer to lease subject to all the defects for which an offer may be rejected. An offer to lease for oil and gas does not create a property right in the offeror, but is merely a hope or expectation. See McTiernan v. Franklin, 508 F.2d 885, 888 (10th Cir. 1975); Hannafin v. Morton, 444 F.2d 200, 203 (10th Cir. 1971). Thus, the rejection of an oil and gas lease offer can be properly sustained even for reasons relating to administrative convenience and the orderly conduct of the Department's leasing program. Irvin Wall, 67 IBLA 301 (1982).

Appellant claims that there would be no harm if a lease were issued to her because what she did was not a "big mistake." What may seem 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. Because a noncompetitive oil and gas lease may be awarded only to the first-qualified applicant, the requirements governing the qualification of applicants in the simultaneous filing process are mandatory, and strict compliance with the regulations governing the drawing, 43 CFR 3112, is enforced to protect the rights of the other applicants. Lynda Bagely Doye, 65 IBLA 340 (1982).

We continue to adhere to the requirement of strict compliance. A "qualified applicant" is not merely one who is qualified to hold an oil and gas lease, but also is one who has filed a valid and completed application.

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.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Franklin D. Arness
Administrative Judge
Alternate Member

