

ROBERT B. LEE

IBLA 82-1020

Decided December 21, 1982

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application M-54449.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Amendments -- Oil and Gas Leases: Applications: Filing

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered, even if the necessary information is subsequently filed.

APPEARANCES: Robert B. Lee, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Robert B. Lee has appealed from the decision of the Montana State Office, Bureau of Land Management (BLM), dated June 3, 1982, rejecting his noncompetitive oil and gas lease application, M-54449, because it was not fully executed. Appellant's application had been drawn with first priority for parcel MT 67 in the simultaneous oil and gas lease drawing held in January 1982.

The basis for the BLM decision was appellant's failure to answer the questions on the back of the application by completing items (d), (e), and

(f), relating, respectively, to other parties in interest, assignments, and multiple filings. 1/ Although it had received a letter from appellant on January 22, 1982, stating that, if he had neglected to answer the questions, his answers were "no" to each, BLM decided that the application was not curable because the rights of the second priority applicant had intervened.

In his statement of reasons, appellant argues that:

A. The application was fully completed in accordance with 43 C.F.R. 3112.2-1 prior to the end of the filing period and therefore was fully completed at the time of the January, 1982 simultaneous drawing for Parcel 67;

B. The omission in the initial application was curable because the rights of a second party had not intervened; and

C. The Department may not insist on precise compliance with instructions on the entry cards if such compliance is not specifically required by the regulations. To insist on precise compliance under the circumstances here is arbitrary and capricious and serves no compelling administrative purpose.

Appellant contends that his qualifications could be determined at the time of the drawing and that, unlike other cases presented to the Board, this case does not involve the submission of omitted information after the drawing when priority has been established.

Questions (d) through (f) are included in a list of questions on the application dealing with the applicant's qualifications to hold a lease they deal particularly with the circumstances of the execution of the application. The failure to disclose a party in interest to the lease application (question (d)) is a violation of at 43 CFR 3102.2-7 (1981); 2/ the assignment of

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?"

2/ 43 CFR 3102.2-7 (1981) was repealed and replaced by 43 CFR 3112.2-3 effective Feb. 26, 1982. 47 FR 8544 (Feb. 26, 1982). Since appellant's application was drawn at the January 1982 drawing, however, the former regulation is applicable.

an interest in the lease offer (question (e)) prior to lease issuance or the 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 parcel (question (f)) disqualifies the applicant under 43 CFR 3112.6-1(c).

Although the Secretary of the Interior can determine whether to issue an oil and gas lease for lands not within a known structure of a producing oil and gas field, he is required by statute, 30 U.S.C. § 226 (1976), to issue the lease to the first-qualified applicant. Udall v. Tallman, 380 U.S. 1, 4 (1965). 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 application Form 3112-1 (July 1980) serve that purpose. The failure of the applicant to check an answer to each question creates a serious defect in the certification of qualifications required by the application. Jake Huebert, 59 IBLA 179 (1981). Strict compliance with the regulations governing each drawing, 43 CFR Subpart 3112, is required to protect the rights of the second- and third-qualified applicants. Bonita L. Ferguson, 61 IBLA 178 (1982); Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, 544 F.2d 1067 (10th Cir. 1976).

[1] The applicable 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.) The introductory words to items (a) through (g) are as follows: "UNDERSIGNED CERTIFIES AS FOLLOWS (Check appropriate boxes)." (Original in italics.) Small boxes appear following those items where a checked response is required.

The Board has repeatedly stated that the application form clearly contemplates that items (d) through (f) are to be checked on the application form itself. Cheryl R. Cooksey, 62 IBLA 307, 308 (1982); Ben M. Powell III, 59 IBLA 146, 148 (1981); Vincent D'Amico, 55 IBLA 116, 119 (1981). Contrary to appellant's argument, the issue is not when a deficient application may be cured; the issue is whether appellant complied with the instructions on the application requiring him to answer the questions and thereby complete his application. When questions (d), (e), and (f) have not been answered, the application is simply not completed, and neither the application nor the regulations provide the option of answering these questions by amendment. Ben M. Powell III, supra at 148; Clyde K. Kobbeman, 58 IBLA 268, 273, 88 I.D. 915, 917-18 (1981); see Vincent D'Amico, supra. The rule stems from considerations of practicality. BLM handles a vast number of applications each month; appellant himself submitted applications on five parcels in the January drawing, although only one addendum. We have stated that in such circumstances it is reasonable for BLM not to take extra steps to protect those who do not comply fully with its application instructions. Clyde K. Kobbeman, supra at 273, 88 I.D. at 917; Federal Energy Corp., 51 IBLA 144, 147 (1980). The need to process the many applications efficiently justifies BLM's insistence on strict compliance with its filing procedures.

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 affirmed.

Will A. Irwin
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Bernard V. Parrette
Administrative Judge
Alternate Member