

Appeal from the decision of the Wyoming State Office, Bureau of Land Management, denying reinstatement of oil and gas lease W-33472.

Affirmed.

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

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

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

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Where a lessee misdirects a lease rental payment to the wrong Bureau of Land Management office and it arrives at the office on the anniversary date of the lease, there can be no finding of reasonable diligence.

3. 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. An accidental deviation in a lessee's normal payment procedure which results in payment being misdirected to the wrong Bureau of Land Management office is not a circumstance outside the lessee's control.

APPEARANCES: John E. Dickenson, Esq., Tulsa, Oklahoma, for Gulf Oil Corporation.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Gulf Oil Corporation (Gulf) has appealed the decision of the Wyoming State Office, Bureau of Land Management (BLM), dated April 12, 1982, denying a petition for reinstatement of oil and gas lease W-33472.

On March 9, 1982, BLM issued to Gulf an oil and gas lease termination notice which provided as follows: "This is to inform you that your Federal oil and gas lease, \* \* \* [W-33472] is terminated for failure to pay rental in a timely manner. This termination was effective on the anniversary date of the lease [March 1, 1982]." On March 17, 1982, Gulf petitioned BLM, pursuant to 30 U.S.C. § 188(c) (1976) and 43 CFR 3108.2-1(c), asking that lease W-33472 be reinstated.

On April 12, 1982, BLM's Wyoming State Office issued a decision denying Gulf's petition for reinstatement of the lease. That decision provided:

Rental on the above-numbered oil and gas lease, in the amount of \$80.00, was due in this office on or before March 1, 1982. Your check #000422 was dated February 23, 1982, and was received in this office on March 5, 1982. The record indicates that the rental was sent to the Utah State Office, Bureau of Land Management. It was transmitted from that office by the Chief, Accounts Unit on March 2, 1982.

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. A lessee may be entitled to reinstatement of the lease if it is shown, among other things, that reasonable diligence was exercised in mailing the payment, or that the delay in remitting the rental is justifiable.

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The petitioner has not shown to our satisfaction that the failure to make a timely rental payment was either justifiable or not due to a lack of reasonable diligence, 43 CFR 3108.2-1(c) (ii). Accordingly, we hold that the Petition for Reinstatement is denied. The rental of \$80.00 will be refunded if no appeal is taken.

In the statement of reasons for appeal, counsel for Gulf notes that until receiving the decision from BLM, Gulf was unaware that the check had been received by the Utah rather than the Wyoming State Office; that BLM by telephone informed Gulf that the envelope in which the check was sent had apparently been destroyed; and that a BLM representative in the Utah State Office did state that the records indicate that the letter was received in that office on March 1, 1982.

Counsel for Gulf further states:

Gulf's records indicate that the check was dated February 23, 1982, placed in a window envelope with the proper address of the Wyoming State Office showing through the window, and mailed from Casper, Wyoming on February 25, 1982, four days before its due date in Cheyenne, Wyoming of March 1, 1982.

(Statement of Reasons at 3).

[1] Failure to pay the annual rental for an oil and gas lease on or before the anniversary date of the lease results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). The Secretary of the Interior may reinstate oil and gas leases which have terminated for failure to pay rental timely only where the rental is paid within 20 days and upon proof that such failure was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1976). In the absence of such proof, a petition for reinstatement is properly denied. Elizabeth A. Christensen, 52 IBLA 113 (1981). The showing of reasonable diligence necessary for reinstatement ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). The postmark date on the envelope containing a rental payment is considered the date of mailing in the absence of evidence to the contrary. Elizabeth A. Christensen, *supra*; Joseph W. Semien, 41 IBLA 185 (1979).

In support of its position, counsel for Gulf has submitted the affidavit of Mary E. (Liz) Hendrickson, a lease records clerk for appellant. She stated therein:

3. Among my job responsibilities is the manual preparation and mailing of Gulf Oil Corporation checks in payment of Federal Oil and Gas Lease rentals. These checks are manually prepared by me in cases where the normal computer-generated checks are stopped for some reason.

4. It is my practice, which I follow at all times when preparing a manual rental check, to prepare such rental checks in advance of their due date, insert them in a window envelope so that the address on the check shows through the window in the envelope, and personally deliver the envelope into the custody of Gulf Oil Corporation's mail department.

5. At the time that I prepare a manual lease rental check and place it in the window envelope, I write the date of mailing on the company copy of the check and initial the same as my certification that the check was mailed on the date shown.

6. Exhibit "A" attached to this affidavit, and by reference made a part hereof, is a true copy of Gulf Oil Corporation's cancelled check in payment of the 1982 rental on Lease W-33472 (Gulf Lease number 8-29688-00).

7. Exhibit "B" attached to this affidavit, and by reference made a part hereof, is a sample of the type of window envelope in which I mail federal lease rental checks. Unless a change of address is received after a rental check is prepared, all manual rental checks prepared by me are mailed out in a window envelope like the one attached hereto as Exhibit "B".

8. Exhibit "C" attached to this affidavit, and by reference made apart hereof, is a true copy of Gulf Oil Corporation's file copy of the check issued in payment of the 1982 rental on Lease W-33472. The initials on Exhibit "C" are mine and show that I delivered the original copy of such check in a window envelope such as Exhibit "B" to the Gulf Mail Department on February 25, 1982.

9. The procedures outlined above are always followed by me, and while I do not recall mailing the specific check depicted in Exhibit "A", I can be sure from the records I kept that such check was placed in a window envelope such as that attached as Exhibit "B" and was delivered to the Gulf Mail Department on February 25, 1982.

A copy of the check in the case file shows the following address on the face of the check: "Bureau of Land Management, Manager, Land and Survey Office, P.O. Box 1828, Cheyenne, WY 82001."

Counsel for Gulf also has submitted the affidavit of the postmaster of the United States post office in Casper, Wyoming. He states that a letter deposited with the post office in Casper during normal working hours on February 25 or February 26, 1982, would normally be delivered in Cheyenne no later than March 1, 1982.

Thus, appellant has established that payment for W-33472 was deposited in the mail in Casper in time normally to be delivered in Cheyenne no later than March 1, 1982. Check number 422 bears the BLM address in Cheyenne, yet mysteriously check number 422 was delivered to the BLM Utah State Office on March 1, 1982. <sup>1/</sup> Appellant has no explanation for the misdelivery. If the

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<sup>1/</sup> The record contains a "Collection Transmittal" from the BLM Utah State Office to the BLM Wyoming State Office. It is dated Mar. 2, 1982, and was received in Cheyenne on Mar. 5, 1982. It indicates that three checks drawn

procedures outlined by Gulf as being consistently followed in its lease records section were followed in this case, the payment should have been delivered timely to Cheyenne.

Counsel for Gulf states that both the Utah and Wyoming BLM State Offices were contacted and neither one was able to locate the envelope in which payment was sent. He states that both expressed the opinion that the envelope was discarded by the Utah State Office when the check was forwarded to the Wyoming State Office. Counsel asserts that in the absence of contrary evidence, Gulf should be able to rely on its standard business procedures as establishing that payment was addressed properly and mailed timely.

We have stated in the past that retention of envelopes evidencing postmarks is critical to fair adjudication of petitions for reinstatement and that the absence of such important proof should not work to the detriment of the lessee. R. G. Price, 8 IBLA 290, 292-93 (1972). In this case there is no question that payment was sent so that, if properly addressed, it would have been received timely by the Wyoming State Office. Thus, retention of the envelope for purposes of checking the postmark was not critical. Likewise, the envelope should not be critical in this case for purposes of determining whether the address was proper, since appellant asserts that its standard practice is to use window envelopes. With such an envelope, the address on the check provides the mailing address.

The address on check number 422 is the BLM State Office in Cheyenne, Wyoming. The question is why would the Post Office deliver a letter addressed to Cheyenne, and mailed from Casper, Wyoming, to Salt Lake City, Utah?

Pursuant to an order issued by the Board on November 5, 1982, appellant provided further information concerning its standard business practices. Appellant stated that its general practice is to mail each check in a separate envelope, even when payments are going to the same addressee. In response to the question of whether other checks were placed in the envelope in question, appellant stated, "No, unless as a result of an accidental deviation from normal procedures." The Board also asked whether any lease payments were addressed to the Utah State Office on February 23, 24, or 25, 1982. Appellant responded, "Yes, one. Check # 425, dated 2/23/82, mailed 2/25/82."

Both the check involved in this case, number 422, and check number 425 addressed to BLM, Salt Lake City, were dated February 23, 1982, and mailed on

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fn. 1 (continued)

on Gulf, dated Feb. 23, 1982, and identified as 421, 422, 423, had been directed to the Utah State Office. The payments were for three Wyoming leases, W-33472, W-27878, and W-24088. There is no indication whether the payments arrived in one envelope or in separate envelopes. Examination of the case files for W-27878 and W-24088 provides no explanation for the delivery of the checks to the Utah State Office.

February 25, 1982. The rental check copy for each bears the following statement: "I certify that this check was deposited in the U.S. Mail on 2/25/82. L. H."

The only plausible explanation in this case is that check number 425 was placed in an envelope such that the Salt Lake City address appeared through the envelope window. Then one or more checks, including check number 422, were also placed in the same envelope. We note that two other checks dated February 23, 1982, each bearing the BLM, Cheyenne, Wyoming, address also were received in the Salt Lake City BLM Office at the same time check number 422 was received. See note 1, supra. Had appellant's standard procedures been followed, this would require a finding that on the same date at least three envelopes with addresses of Cheyenne, Wyoming, were misdelivered by the post office to Salt Lake City. So unusual a combination of error is scarcely within the realm of possibility. We must find, therefore, that appellant's checks were missent to the Utah State Office through the mistake of its own agents.

[2] Where a lease terminates by operation of law for failure to pay timely the annual rental, the applicable statute limits authority of the Department in reinstating leases only to those situations where it is shown that the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1976). "Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment." 43 CFR 3108.2-1(c)(2). Under regulation a check does not constitute payment unless it is received at the proper office. 43 CFR 3103.1-2(a). Thus, mailing the check to the wrong office ordinarily precludes a finding of reasonable diligence. Gretchen Capital, Ltd., 37 IBLA 392 (1978). However, in Monsanto Co. v. Watt, No. 81-272 (D. Colo. Jan. 5, 1982), rev'g Monsanto Co., 51 IBLA 271 (1980), the court found that Monsanto had been reasonably diligent and that late payment was justified even though it had sent a rental payment to the wrong BLM office, and the court ordered reinstatement of the lease.

The Monsanto case is distinguishable from this case. In Monsanto, lease rental for a Colorado lease erroneously was sent to Wyoming. The Wyoming State Office received the payment on January 29, 1980, prior to the February 1 anniversary date for the lease. Monsanto asserted that due to a severe winter storm which forced the BLM Wyoming Office to close from January 25, 1980, until January 29, 1980, receipt of its misdirected payment was delayed. It argued that but for the storm its payment would have been received in time to be forwarded to the Colorado State Office prior to the anniversary date. As it was, the Wyoming State Office transmitted the payment to the Colorado State Office on February 1, 1980, where it was received on February 4, 1980.

The court reasoned that Monsanto had sent its payment sufficiently in advance of the anniversary date such that the Wyoming State Office could have forwarded the payment, if it were not for the storm, so as to be received timely by the Colorado State Office. The court found the reasonable diligence standard was met (Opinion at 7). It also found that the snowstorm was

a factor outside the lessee's control and justified late payment (Opinion at 10).

We need not comment concerning the court's rationale since Monsanto is not applicable in this fact situation. Here, there was no snowstorm or other factor outside the control of the lessee, and payment was misdirected such that it arrived at the wrong BLM Office on the anniversary date of the lease. BLM forwarded the payment and payment was received in the Wyoming State Office on March 5, 1982. It cannot be said that payment was mailed sufficiently in advance of the due date such that it could be forwarded by BLM, assuming BLM had an obligation to do so, so as to arrive at the proper office on or before the due date.

[3] Appellant did not exercise reasonable diligence in this case. Nor was its action justifiable. In order for a late payment to be justifiable it must be proximately caused by factors outside the lessee's control. Ram Petroleum, Inc. v. Andrus, 658 F.2d 1349 (9th Cir. 1981); Ramco, Inc. v. Andrus, 649 F.2d 814 (10th Cir.), cert. denied, 102 S.Ct. 569 (1981). In this case the misdirected payment must have resulted from an accidental deviation in appellant's normal procedures. Such inadvertence cannot justify late payment. See Kristie R. Cobb, 67 IBLA 59 (1982); Martin Mattler, 53 IBLA 323, 88 I.D. 420 (1981).

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.

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Bruce R. Harris  
Administrative Judge

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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James L. Burski  
Administrative Judge