

Editor's note: Appealed -- aff'd, Civ.No. 83-1065 (D.D.C. May 15, 1984)

JERRY W. WOLF

IBLA 82-1029

Decided January 14, 1983

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application, W-78188.

Affirmed.

1. Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Noncompetitive Leases -- Oil and Gas Leases: Rentals

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and first year's rental were submitted to the wrong BLM office and were not thereafter received by the proper BLM office within 30 days from the receipt of notice of priority.

APPEARANCES: Gary E. Wright, Esq., and William R. McCarty, Esq., Fairborn, Ohio, for appellant.

OPINION OF ADMINISTRATIVE JUDGE IRWIN

Jerry W. Wolf has appealed the decision of the Wyoming State Office, Bureau of Land Management (BLM), dated June 22, 1982, rejecting simultaneous oil and gas lease application W-78188 for parcel WY-4325. His application was drawn with first priority at the November 1981 simultaneous drawing. BLM rejected the application pursuant to 43 CFR 3112.6-1(d) because appellant failed to submit the executed lease agreement and rental timely.

By notice dated May 10, 1982, BLM informed appellant that his application had been given first priority and enclosed copies of the lease offer and stipulations for execution and return with a copy of his filing service

agreement and the first year's rental payment. The return receipt for the notice indicates that appellant received it on May 14, 1982, and therefore he was required to return the lease offer and rental to the Wyoming State Office by June 14, 1982. See 43 CFR 3112.4-1. BLM issued the decision on appeal on June 22, 1982, but received appellant's executed forms and rental payment on June 25, 1982. A date stamp on the submission indicates that it had been received in the Montana State Office on June 1, 1982.

In his statement of reasons, appellant admits that he mailed the lease offer and rental to the Montana State Office on May 28, 1982. That office returned the submission to him on June 22, 1982, indicating that it had been sent to the wrong office. Appellant thereupon mailed the submission to the Wyoming State Office the same day. He argues that the Montana State Office unaccountably retained his submission for approximately 3 weeks and this delay made it impossible for him to submit the lease offer and rental timely. Appellant also has submitted a statement of the Chief, Branch of Records and Management of the Montana State Office, indicating that office had received appellant's submission on June 1, 1982, and stating:

Two errors were made -- one that the checks were inadvertently mailed to our office instead of the Wyoming office; the second one was that we held the checks too long. Because of our delay, we made it impossible for Mr. Wolf to correct his initial mistake and comply with the time requirement since he did not have notice of his error.

[1] Departmental regulation 43 CFR 3112.4-1 requires that the executed lease agreement and first year's rental be filed in the proper BLM office within 30 days from receipt of notice. 43 CFR 3112.6-1(d) provides that the application of a first-qualified applicant will be rejected if an offer is not filed in accordance with 43 CFR 3112.4-1.

We recognize that if the Montana State Office had promptly forwarded appellant's submission to the Wyoming State Office or returned them to him, they may have been timely filed, but that does not change the result in this case. The initial error was appellant's. The need to conduct business at the BLM office having appropriate jurisdiction has long been recognized. Matthews v. Zane, 5 U.S. 244, 7 Wheat. 164 (1822); Alex Stewart, 55 IBLA 105, 107 (1981). The burden was on appellant to file the lease and rental in the proper office or bear the risk that it would not be forwarded or returned in time to meet the deadline. See Alex Stewart, *supra*. BLM has no discretion to accept the late filing, regardless of the legitimacy of the reasons for the delay, because the rights of the second- and third-qualified applicants have intervened. 1/ Warren R. Haas, 66 IBLA 107 (1982); see Donald E. Jordan, 35 IBLA 290 (1978). See also 43 CFR 1821.2-1(g).

1/ For the same reason we cannot provide appellant any relief under these circumstances, as might be possible in a reinstatement case. See, e.g., Richard L. Rosenthal, 45 IBLA 146 (1980).

Accordingly, 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 Wyoming State Office is affirmed.

Will A. Irwin
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

