THOMAS L. TUTTLE

IBLA 82-698 Decided March 22, 1983

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting application for oil and gas lease M 52595.

Dismissed.

1. Administrative Practice -- Appeals -- Practice Before the Department: Persons Qualified to Practice -- Rules of Practice: Appeals: Dismissal

An appeal brought by a person who does not fall within any of the categories of persons authorized by regulation to practice before the Department is subject to dismissal.

APPEARANCES: Albert Di Giulio, Jr., for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

An appeal has been filed from the March 18, 1982, decision of the Montana State Office, Bureau of Land Management (BLM), rejecting the simultaneously filed application of Thomas L. Tuttle for oil and gas lease M 52595. Tuttle's application was drawn first for parcel MT 18 in the July 1981 drawing. His application was rejected because he failed to answer questions (d) through (f) by checking the appropriate boxes on the reverse side of the card.

[1] At the outset, we wish to note that appellant does not represent himself in this appeal. He is represented by Albert Di Giulio, Jr., President, Western New York Geological Services, Inc. Departmental regulation 43 CFR 1.3 defines who may practice before the Department. 1/ Di Giulio has made no showing that he is qualified under this regulation. An appeal brought by a person who does not fall within any of the categories of persons authorized by the regulation to practice before the Department is subject to

1/ That regulation provides as follows:

"(a) Only those individuals who are eligible under the provisions of this section may practice before the Department, but this provision shall not

dismissal. Verne G. Long, 57 IBLA 263 (1981); W. Duane Kennedy, 24 IBLA 152 (1976); Pierce and Dehlinger, 22 IBLA 396 (1975); see also United States v. Gayanich, 36 IBLA 111 (1978). The appeal is therefore dismissed. Although this regulation may occasionally penalize a particular appellant, its enforcement is necessary to protect those who do business with the Department against the risk of inadequate representation by persons untrained in the law.

This Board observes, by way of dicta, that were we to consider this appeal on its merits, we would affirm the decision below. Although appellant contends the applicable regulations do not require an applicant to complete questions (d) through (f), appellant is incorrect. One regulation, 43 CFR 3112.2-1(a), requires that an application be "completed, signed and filed pursuant to the regulations of this subpart." (Emphasis added.) Another regulation, 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. See, e.g., Terry K. Weed, 61 IBLA 213 (1982); Dr. Jose Trabal, 60 IBLA 97 (1981); Clyde K. Kobbeman, 58 IBLA 268, 80 I.D. 915 (1981); Vincent M. D'Amico, 55 IBLA 16 (1981); see also, Charles Y. Neff, 64 IBLA 234 (1982), aff'd, Neff v. Watt, No. C-82-0337-B (D. Wyo., filed Jan. 21, 1983). We may not justify a departure in a single

---

fn. 1 (continued)
be deemed to restrict the dealings of Indian tribes or members of Indian tribes with the Department.

"(b) Unless disqualified under the provisions of § 1.4 or by disciplinary action taken pursuant to § 1.6:

(1) Any individual who has been formally admitted to practice before the Department under any prior regulations and who is in good standing on December 31, 1963, shall be permitted to practice before the Department.

(2) Attorneys at law who are admitted to practice before the courts of any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Trust Territory of the Pacific Islands, or the District Court of the Virgin Islands will be permitted to practice without filing an application for such privilege.

(3) An individual who is not otherwise entitled to practice before the Department may practice in connection with a particular matter on his own behalf or on behalf of (i) a member of his family; (ii) a partnership of which he is a member; (iii) a corporation, business trust, or an association, if such individual is an officer or full-time employee; (iv) a receivership, decedent's estate, or a trust or estate of which he is the receiver, administrator, or other similar fiduciary; (v) the lessee of a mineral lease that is subject to an operating agreement or sublease which has been approved by the Department and which grants to such individual a power of attorney; (vi) a Federal, State, county, district, territorial, or local government or agency thereof, or a government corporation, or a district or advisory board established pursuant to statute; or (vii) an association or class of individuals who have no specific interest that will be directly affected by the disposition of the particular matter."

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). To do so would infringe on the rights of the second-drawn applicant for priority of consideration. See Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067, 1070 (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 appeal is dismissed.

Franklin D. Arness
Administrative Judge
Alternate Member

We concur:

Bruce R. Harris
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge