

BRYAN COLLEY

IBLA 83-349

Decided March 22, 1983

Appeal from decision of Montana State Office, Bureau of Land Management, denying petition for reinstatement of noncompetitive oil and gas lease M 49923.

Reversed and remanded.

1. Evidence: Generally -- Oil and Gas Leases: Reinstatement

The postmark date of a rental payment for an oil and gas lease is generally deemed to be the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at a date earlier than indicated by the postmark.

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

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 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).

3. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

Reasonable diligence requires mailing the rental payment sufficiently in advance of

the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental by Special Delivery Mail in New York 2 days before it was due in Billings, Montana, is considered to constitute reasonable diligence.

APPEARANCES: Bryan Colley, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Bryan Colley appeals from a decision of the Montana State Office, Bureau of Land Management (BLM), dated December 27, 1982, which denied reinstatement of oil and gas lease M 49923, and holding that the lease had terminated automatically by operation of law when appellant failed to pay the annual rental on or before the anniversary date of the lease.

The anniversary date of lease M 49923 was December 1, 1982. Appellant's checks for the rental were dated November 28, 1982. The envelope containing the checks was postmarked in Croton Falls, New York, on November 30, 1982 "PM", and received by BLM in Billings, Montana, on December 2, 1982. BLM notified appellant that the lease had terminated for failure to pay the rental timely.

Appellant petitioned for reinstatement of the lease stating that he had been duly diligent in transmission of the rental payment. BLM denied the petition.

[1] The applicable regulations, which govern here, make clear that "[f]iling is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing." 43 CFR 1821.2-2(f). Additionally, the regulations state that a rental payment must actually be received in the State Office on or before the anniversary date. 43 CFR 3108.2-1(a).

As above stated, mailing a payment does not constitute filing. The postmark date of the envelope containing a rental payment is generally deemed to be the date of mailing, unless there is satisfactory evidence to support a lessee's assertion that the mailing occurred at a date earlier than indicated by the postmark. Annie Mae Buckley, 44 IBLA 99 (1979). On appeal appellant has provided the affidavit of the postmaster of Croton Falls, New York. Therein, the postmaster stated that the envelope containing the rental payment was received in his post office on November 29, 1982, to be sent "Special Delivery", but unfortunately the envelope did not get postmarked or transmitted until November 30. This evidence clearly persuades us that the envelope was delivered into the custody of the Postal Service on November 29, and the necessary fees were paid to accomplish the "Special Delivery" transmission.

[2, 3] A terminated oil and gas lease may be reinstated only if the failure to make timely payment was either justifiable or not due to lack of reasonable diligence. 30 U.S.C. § 188(c) (1976). Late payment is justifiable if it is attributable to causes beyond the lessee's control. See Annie

Mae Buckley, *supra*; Daniel Ashley Jenks, 36 IBLA 268 (1978). Reasonable diligence generally requires sending or delivering payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the payment by mail. 43 CFR 3108.2-1(c). It does not appear that BLM had the opportunity to review the statement by the postmaster of Croton Falls, New York, when it issued its decision not to reinstate. On the basis of the record it had, BLM was justified in denying the petition for reinstatement. This Board has repeatedly considered the situation where a rental payment must be transmitted from the eastern seaboard to a BLM office in the western states, and we have consistently held that 2 days is not sufficient time for normal mail delivery, and mailing the rental only 2 days before it is due does not constitute reasonable diligence. Norman C. Stroink, 44 IBLA 188 (1979); Reynolds Mining Co., 39 IBLA 405 (1979). Those cases may be distinguished from the instant case in that they each involved the use of ordinary mail, whereas this case involves "Special Delivery" mail.

Appellant delivered his envelope containing the rental payment to the Croton Falls post office on November 29, but it did not get transmitted until November 30. The envelope did arrive in Billings on December 2, with less than 2 days transmission time. It must be held, therefore, that the mailing by Special Delivery on November 29, was reasonably diligent.

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 reversed, and the case file is remanded to the Montana State Office for further appropriate action consistent with this opinion.

Douglas E. Henriques
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Gail M. Frazier
Administrative Judge

