

BURTON/HAWKS, INC.

IBLA 83-261

Decided March 28, 1983

Appeal from decision of the Colorado State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas leases, C-25928, C-25935, C-25938, and C-25939.

Affirmed.

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

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

APPEARANCES: Ralph W. Ball, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Burton/Hawks, Inc., has appealed the decision of the Colorado State Office, Bureau of Land Management (BLM), dated November 17, 1982, denying its petition for reinstatement of oil and gas leases, C-25928, C-25935, C-25938, and C-25939. The leases had terminated automatically by operation of law for failure to pay the annual rentals as of October 1, 1982. BLM ruled that it had no authority to reinstate the leases because it did not receive the rental payments within 20 days of the due date. The payments were received on October 22, 1982.

In its statement of reasons, appellant argues that it mailed the payments on September 24, 1982, which reflects reasonable diligence on its part. Appellant admits that it did not use the current address for the Colorado

State Office, but rather used the same address as the previous year. Appellant points out that the actual location for the office has not changed, and it does not understand how the Postal Service could have taken so long to deliver the envelope in spite of the incorrect address. Appellant suggests that the date of mailing should be controlling as the time of filing.

[1] Section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1976), provides that upon failure of a lessee to pay rental on or before the anniversary date of a lease on which there is no well capable of producing oil and gas in paying quantities, the lease terminates automatically by operation of law. At the time that appellant's lease terminated, the Secretary of the Interior could reinstate such terminated oil and gas leases only where the rental was paid within 20 days and upon proof that such failure was either justifiable or not due to a lack of reasonable diligence under 30 U.S.C. § 188(c) (1976). Under Departmental regulations a filing is accomplished when a document is delivered to and received by the proper office. 43 CFR 1821.2-2(f). Since BLM did not receive appellant's rental payments until 22 days after the due date, BLM had no authority to reinstate the terminated lease. Richard C. Hubbard, 68 IBLA 170 (1982).

BLM's decision rejecting appellant's petition for reinstatement of the oil and gas leases filed pursuant to 30 U.S.C. § 188(c) (1976) must be affirmed. We note, however, that section 401 of the recently enacted Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447, signed January 12, 1983, amends section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1976) to afford an additional opportunity to reinstate a lease terminated by operation of law. 1/

1/ Section 401 added the following new subsection (d)(2) to 30 U.S.C. § 188 (1976):

"(2) No lease shall be reinstated under paragraph (1) of this subsection unless --

"(A) with respect to any lease that terminated under subsection (b) of this section prior to enactment of the Federal Oil and Gas Royalty Management Act of 1982:

"(i) the lessee tendered rental prior to enactment of such Act and the final determination that the lease terminated was made by the Secretary or a court less than three years before enactment of such Act, and

"(ii) a petition for reinstatement together with the required back rental and royalty accruing from the date of termination, is filed with the Secretary on or before the one hundred and twentieth day after enactment of such Act, or

"(B) with respect to any lease that terminated under subsection (b) of this section on or after enactment of the Federal Oil and Gas Royalty Management Act of 1982, a petition for reinstatement together with the required back rental and royalty accruing from the date of termination is filed on or before the earlier of --

"(i) sixty days after the lessee receives from the Secretary notice of termination, whether by return of check or by any other form of actual notice, or

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 Colorado State Office is affirmed.

Will A. Irwin
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

fn. 1 (continued)

"(ii) fifteen months after termination of the lease."

Since BLM has not yet promulgated regulations addressing what time limits shall apply under this section to leases terminated before enactment of the Act where denial of reinstatement under 30 U.S.C. § 188(c) (1976) is upheld by the Board on behalf of the Secretary after enactment, appellant should inquire promptly at the Montana State Office of BLM if it wishes to avail itself of this provision, since the 120-day period from enactment lapses May 12, 1983.

