

TENNECO OIL CO.

IBLA 83-176

Decided March 28, 1983

Appeal from the decision of the California State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease CA 3469 and declaring the lease automatically terminated for failure to pay the annual rental timely.

Affirmed.

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

Under 30 U.S.C. § 188(c) (1976), 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. Mailing a rental payment after it is due does not constitute reasonable diligence.

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

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease.
Breakdowns in a lessee's procedures for

handling rental payments resulting from internal changes in its operations do not establish justification for a late rental payment.

APPEARANCES: M. L. Ehrlich, Division Attorney and Assistant Secretary, Tenneco Oil Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Tenneco Oil Company has appealed the decision of the California State Office, Bureau of Land Management (BLM), dated October 8, 1982, finding that noncompetitive oil and gas lease CA 3469 automatically terminated by operation of law as of March 1, 1982, for failure to pay the annual rental timely and denying appellant's petition for reinstatement of the lease.

BLM received the rental for lease CA 3469 on March 15, 1982, and a petition for reinstatement of the lease on March 19, 1982. The BLM decision quotes from the petition concerning the circumstances of the late payment as follows:

Prior to August, 1981, lease rentals in California were handled manually in Tenneco's Pacific Coast Division. In August, 1981, the process to convert to a computerized system, called the Land Records System, operated out of our Headquarters Office in Houston, began.

The information to put the lease in the new system was sent to Houston almost 90 days in advance of the rental due date. A manual backup system was in place in the Pacific Coast Division for a cross-check, during this interim period.

Personnel in Houston failed to timely process the lease into the new Lands Records System, which meant that the lease did not appear on the advance rental calendar. In the Pacific Coast Division, the person responsible for seeing that the lease rental was paid manually resigned. The personnel who assumed these duties were almost new hires or totally inexperienced in performing these functions.

The new Land Records System in Houston failed, and our manual backup system at Pacific Coast Division failed. However, since we had established several cross-checks to prevent this type of occurrence, we feel that our failure was due to human error and inexperience, and that we exercised reasonable diligence in this instance.

The BLM decision noted that 43 CFR 3108.2-1(c)(1) permits reinstatement where the failure to make timely payment was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. BLM found that reasonable diligence had not been demonstrated because the payment was mailed after the due date. Further, BLM held that the late payment was not justified on the basis of Board decisions that a lessee may not hide failure to pay timely behind its business structure nor be excused because of an employee's inadvertence, negligence, or error.

In its statement of reasons appellant iterates the circumstances that brought about its late payment and urges that it was not due to negligence or lack of reasonable diligence but was literally beyond its control and that it acted promptly to submit payment when it discovered the rental had not been paid. Appellant adds that denial of reinstatement would result in an onerous liability because of the termination while no corresponding hardship would be imposed on the Federal Government by granting reinstatement.

[1] Section 31(b) 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 the lease on which there is no well capable of production of oil or gas in paying quantities, the lease terminates automatically by operation of law. Under section 31(c), 30 U.S.C. § 188(c) (1976), a terminated oil and gas lease may be reinstated where the rental is paid within 20 days and upon a showing by the lessee that the failure to pay on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. In absence of such proof, a petition for reinstatement is properly denied. See, e.g., Arnold L. Gilberg, 57 IBLA 46 (1981); Alice M. Conte, 46 IBLA 312 (1980); J. R. Oil Corp., 36 IBLA 81 (1978).

[2] Reasonable diligence ordinarily requires mailing the 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 record shows that appellant's payment was mailed on March 12, 1982, and therefore BLM properly ruled that appellant had not met the standard for reasonable diligence. James M. Chudnow, 62 IBLA 13 (1982).

[3] In order for the failure to pay rental timely to be justifiable, the failure must be proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Harold W. Fullerton, 46 IBLA 116 (1980); Hubert W. Scudder, 35 IBLA 58 (1978). The fact that appellant has business procedures that would normally insure timely rental payment does not establish reasonable diligence, and problems with those procedures and its employees cannot be held to justify late payment. Southern Union Co., 60 IBLA 181, 185 (1981). This Board has held repeatedly that a lessee may not rely upon the bulk and/or complexity of its business organization so as to make "justifiable" an action which would not be held justifiable for an individual lessee. Mono Power Co., 28 IBLA 289 (1976) (remodeling of corporate lessee's office space); Serio Exploration Co., 26 IBLA 106 (1976) (duty to make payment transferred from company's land manager to accountant); Columbia Gas Transmission Corp., 13 IBLA 243 (1973) (restructuring of internal operations). Likewise, as BLM has pointed out, the inexperience, confusion, lack of knowledge, or inadvertence of lessee's employees will not make a late payment justifiable under 30 U.S.C. § 188(c) (1976). International Resources Enterprises, Inc., 55 IBLA 386 (1981); Nevada Western Corp., 30 IBLA 379 (1977); Ram Petroleum, Inc. v. Andrus, 658 F.2d 1349 (9th Cir. 1981).

BLM's decision rejecting appellant's petition for reinstatement of oil and gas lease CA 3469 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/

Therefore, 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 California State Office is affirmed.

Will A. Irwin
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

1/ Section 401 added the following 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

"(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 California State Office of BLM if it wishes to avail itself of this provision, since the 120-day period from enactment expires May 12, 1983.

