JOSEPH F. BRODA

IBLA 82-1277 Decided March 29, 1983

Appeal from decision of Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease W 63448.

Affirmed.

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

   The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

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).

   Mailing or delivering the payment after it is due does not meet this requirement. The fact that appellant's computer system was "down" does not justify late payment.

APPEARANCES: Joseph F. Broda, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Joseph F. Broda appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated August 13, 1982, denying his petition for reinstatement of oil and gas lease W 63448. Rental for the lease in the amount of $640 was due in the Wyoming State Office on or before June 1, 1982. BLM received appellant's payment on July 29, 1982. Appellant filed his petition for reinstatement on August 11, 1982. Since BLM did not receive the payment within 20 days of the due date, BLM ruled that it had no authority under 30 U.S.C. § 188 (1976) to reinstate the lease.

In his statement of reasons appellant explains that his computer was hit by lightning and it was "down" for approximately 2 weeks, during which time all of the stored information was lost. He says that when the computer was finally operational and he realized that the payment had not been made on time, he immediately mailed the payment. Appellant relates that upon receipt of his bank statement, he noticed that the check had not been cashed and immediately mailed another one, assuming the original one was lost in the mail.

[1, 2] An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities terminates by operation of law if the annual rental payment is not received in the proper office of BLM on or before the anniversary date. 30 U.S.C. § 188(b) (1976). The Secretary of the Interior may reinstate oil and gas leases which have terminated for failure to pay rental timely only where the rental is paid within 20 days and upon proof that such failure was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1976).

The payment for oil and gas lease W 63448 was due on or before June 1, 1982. Payment was received by BLM on July 29, 1982, which was more than 20 days after the due date. There is no record of any other payment having been received. Since the requirements for reinstatement of an oil and gas lease terminated by operation of law for untimely payment of rent are statutory, the Department has no authority to reinstate a lease that has terminated for that reason, unless the payment is actually received or tendered within 20 days after the date of termination. Pegasus Petroleum Corp., 71 IBLA 216 (1983); Rose L. Terenzi, 68 IBLA 21 (1982).

[3] Even if the rental had been paid within 20 days of the due date, appellant's lease could not have been reinstated. "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). BLM received appellant's rental payment on July 29, 1982, almost 2 months after the due date of June 1, 1982. Mailing or delivery of the payment after it is due does not meet this requirement. Peter R. Buehler, 67 IBLA 242 (1982); Apostolos Paliombeis, 64 IBLA 119 (1982).

The fact that appellant's computer system was "down" does not justify late payment. In order for the failure to pay rental timely to be justifiable, the failure must be caused by factors outside the lessee's control which were the proximate cause of the failure. Melbourne Concept Profit Sharing Trust, 46 IBLA 87 (1980). Appellants are ultimately in control of and are responsible for the performance of the business machines they use. Melbourne Concept Profit Sharing Trust, supra at 91.

BLM's decision rejecting appellant's petition for reinstatement of oil and gas lease W 63448 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.

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 --
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> (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:
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> (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
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> (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
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> (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 --
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> (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
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> (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 whose denial of reinstatement is upheld by the Board on behalf of the Secretary after enactment, if it wishes to avail itself of this provision appellant should inquire promptly at the Wyoming State Office of BLM. Pegasus Petroleum Corp., supra.

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 Wyoming State Office is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Franklin D. Arness
Administrative Judge
Alternate Member