

LLOYD M. BALDWIN

IBLA 83-96

Decided August 25, 1983

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease drawing entry card. NM 36969.

Appeal dismissed.

1. Appeals--Rules of Practice: Appeals: Dismissal--Rules of Practice:  
Appeals: Timely Filing

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing on a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

2. Oil and Gas Leases: Applications: Generally--Rules of Practice:  
Generally

Where BLM rejects an oil and gas lease offer, the 30-day period begins upon delivery of the decision to the offeror at his address of record.

APPEARANCES: Richard D. Wagner, Esq., Indianapolis, Indiana, for appellant; John H. Harrington, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Lloyd M. Baldwin has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated July 15, 1981, rejecting his simultaneous oil and gas lease drawing entry card drawn with third priority for parcel NM 714 in the May 1979 simultaneous oil and gas lease drawing.

In its July 1981 decision, BLM rejected appellant's drawing entry card because the card had been filed on appellant's behalf by Leland Capital

Corporation (Leland), his "agent", and the card was "not accompanied by the [agency] statements required by 43 CFR 3102.6-1 [1979]."

On December 17, 1982, the Office of the Field Solicitor, on behalf of BLM, filed a motion to dismiss the appeal asserting that appellant had failed to file a notice of appeal within 30 days of receipt of the decision being appealed, in accordance with 43 CFR 4.411(a). The case file 1/ shows that the July 1981 BLM decision was sent to appellant by certified mail, return receipt requested, and delivered to the Los Angeles, California, address on his drawing entry card, on July 21, 1981, and signed for by one L. Metz. By letter dated March 18, 1982, BLM informed appellant's attorney that because an appeal had not been timely filed, "the case file [was] closed effective August 20, 1981."

In his statement of reasons for appeal, appellant opposes the motion to dismiss, contending that he has never received the July 1981 BLM decision and that the address to which the decision was mailed was that of Leland. Appellant states that "[t]he fact that such decision may have been sent to Leland's offices does not negate Mr. Baldwin's right to appeal," and that BLM was aware of appellant's personal address at the time it issued its decision. Appellant explains that the address appears on a decision entitled "Additional Evidence Required," dated June 4, 1981, from BLM, which appellant completed and signed on June 16, 1981, and returned to BLM. Appellant's address appears below paragraph 14 of the decision which states: "If a lease issues to you and you want for it to be mailed directly to you, please list below your residence or mailing address."

[1] The applicable regulation, 43 CFR 4.411(a), requires that a notice of appeal be filed within 30 days after the person taking the appeal is "served" with the decision from which the appeal is taken. It is well established that the timely filing of a notice of appeal is required to establish the jurisdiction of the Board and that failure to timely file the notice of appeal mandates dismissal of the appeal. James M. Chudnow, 72 IBLA 60 (1983).

Although this Board is generally reluctant to take any action which would preclude review of appeals on the merits, the purpose of the rule is to establish a definite time when administrative proceedings regarding a claim are at an end, in order to protect other parties to the proceedings and the public interest. Strict adherence to the rule is required. See Browder v. Director, Ill. Dept. of Corrections, 434 U.S. 257, 264 (1978).

[2] In addition, 43 CFR 1810.2(b) provides, in relevant part, that:

Where the authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication under the regulations of this chapter, that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the

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1/ The file forwarded to the Board was "reconstructed" by BLM (Memorandum to the Board from Chief, Division of Operations, New Mexico State Office, BLM, dated Oct. 26, 1982). The original file was located by BLM and forwarded to the Board on July 5, 1983.

Bureau of Land Management, regardless of whether it was in fact received by him.  
[Emphasis added.]

With respect to this regulation, the Board has noted that

[t]he regulation is reasonable and necessary to expeditious administration. The conduct of Government business cannot be made to await the pleasure or convenience of those individuals who seek to treat with it, nor should federal employees have to search out those individuals who have neglected to arrange their own affairs so that they might receive official communication promptly.

Robert D. Nininger, 16 IBLA 200, 202 (1974), aff'd, Nininger v. Morton, Civ. No. 74-1246 (D.D.C. Mar. 25, 1975); accord, Dawson v. Andrus, 612 F.2d 1280, 1283 (10th Cir. 1979). Appellant asserts that his "last address of record" for purposes of receipt of the July 1981 BLM decision was his personal address, which he supplied on the June 1981 decision. Appellant, however, overlooks the purpose for which that information was supplied. As noted above, paragraph 14 of the decision stated that the address given was for purposes of mailing the lease "directly" to the prospective lessee. Appellant's "last address of record" for purposes of receipt of the July 1981 BLM decision was the address that appeared on his drawing entry card. See Carl Gerard, 70 IBLA 343 (1983).

Appellant voluntarily elected to use a leasing service and in so doing must bear the consequences. Since the leasing service address was placed on appellant's drawing entry card as his address of record, BLM was only obligated to send notice of its decision to that address. <sup>2/</sup> The 30-day period runs from the date of receipt of the communication at the record address, July 21, 1981.

Even if we were to consider the merits of appellant's appeal there is no basis for reversing the BLM decision. Appellant does not assert that the agency statements were ever filed, but contends that the regulation is not applicable because his drawing entry card was not "signed" by Leland as attorney-in-fact or agent. Appellant states that: "The affixing of Mr. Baldwin's facsimile signature to the entry card by a mechanical process is not within the contemplation of the regulation." In the alternative, appellant argues that BLM has "waived" its right to reject appellant's drawing entry card after the lapse of 2 years from the time the card was submitted (April 1979) to the time of rejection (July 1981), and the fact that BLM notified appellant of his right to a lease and obtained the first year's advance rental payment from him.

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<sup>2/</sup> Subsequent to the filing of appellant's drawing entry card and, in part, to avoid precisely the types of problems manifested herein, the Departmental regulations were changed to require that the address placed on the simultaneous oil and gas lease application (formerly drawing entry card) be "the applicant's personal or business address" and to expressly prohibit use of the address of a filing service. See 43 CFR 3112.2-1(d) (45 FR 35164 (May 23, 1980)).

There is no question that appellant's drawing entry card bore a signature which had been "mechanically imprinted" (Decision at 1). In response to paragraph 3 of the June 1981 BLM decision requiring additional evidence, appellant stated: "My offer was signed by means of a facsimile signature, affixed at my direction by Leland Capital Corporation. It was my intent that the facsimile be my original signature." The fact that the drawing entry card bore a signature affixed by a mechanical process, however, did not affect appellant's duty to comply with 43 CFR 3102.6-1 (1979). As we said in Hyman Winik, 46 IBLA 292, 293 (1980), also in connection with parcel NM 714 in the May 1979 simultaneous oil and gas lease drawing:

Where an agent of an offeror for a simultaneous oil and gas lease signs the entry card by affixing a facsimile of the offeror's signature, the requirements of 43 CFR 3102.6-1(a)(2) apply, and separate statements of interest by both the offeror and the agent must be filed, or the offer will be rejected. [Footnote omitted.]

The crucial question is not whether the signature has been manually or mechanically affixed, but whether the entity affixing the signature was acting as an "agent" or an amanuensis. Where the entity acts only as an amanuensis, *i.e.*, performing manual or mechanical tasks involving no discretion, the requirements of 43 CFR 3102.6-1(a) do not apply.

We conclude that Leland was acting as an "agent" for appellant. Appellant has supplied the Board with a copy of his agreement with Leland, entitled "Service Contract," dated March 16, 1979. Under that agreement, Leland agreed to file 144 drawing entry cards for a period of 12 months "pursuant to LCC's [Leland's] Federal Oil Land Acquisition Program." In addition, appellant agreed to pay Leland, "against invoice of LCC, all costs of the first year's advance rental." (Emphasis added.) In Hyman Winik, *supra* at 294, we concluded: "These facts indicate that Leland had the discretionary authority to act for its client in the selection of certain lands, the preparation and filing of offers and the advancement of funds. A leasing service which has such discretion or authority is deemed an agent of the client/offeror." As Leland was appellant's agent and as the required agency statements appear not to have been filed, appellant's drawing entry card must be rejected.

Appellant also argues that BLM has "waived" its right to reject appellant's drawing entry card. We disagree. The time delay in considering appellant's card was presumably due to the necessity of adjudicating the rights of the first- and second-priority offerors. In any case, the Department's authority to protect the public interest by enforcing its oil and gas leasing regulations is not vitiated by delays in the performance of its duties. 43 CFR 1810.3(a); Robert W. Myers, 63 IBLA 100 (1982). 43 CFR 3102.6-1 (1979) is a "mandatory regulation." Hyman Winik, *supra* at 294; *see also* McKay v. Wahlenmaier, 226 F.2d 35, 43 (D.C. Cir. 1955). Moreover, BLM did not waive its right to reject appellant's drawing entry card by processing a check in payment of the advance rental. Richard P. Smoot, 39 IBLA 1 (1979). We note that appellant has already been issued a refund check from BLM for the first year's advance rental.

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.

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Gail M. Frazier  
Administrative Judge

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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R. W. Mullen  
Administrative Judge

