

ANTHONY F. HOVEY

IBLA 83-1003

Decided February 23, 1984

Appeals from decisions of the Wyoming State Office, Bureau of Land Management, denying reinstatement of oil and gas leases W 72700 and W 72741.

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 justifiable. 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 justifiable if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Being away from the office on business does not establish that late rental payment was justifiable.

APPEARANCES: John Ranquet, Esq., Seattle, Washington, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Anthony F. Hovey appeals from identical decisions of August 31, 1983, denying his petitions for reinstatement of oil and gas leases W 72700 and W 72741.

Rentals on the above-numbered leases were due in the Wyoming State Office on or before August 1, 1983. Appellant's check, in the amount of \$360, covering both leases, is dated August 1, 1983; the envelope is postmarked August 3, 1983, and the rental was received by the Wyoming State Office on August 5, 1983. In the petitions for reinstatement appellant stated:

My failure to pay the rental in a "timely" fashion (although I believe by my issuing a check dated August 1st, it was timely) was due to the fact that I had been out of town on business -- and therefore did not get this matter completed earlier than the date due.

Pursuant to P.L. 97-451, the Federal Oil and Gas Royalty Management Act of 1982, 96 Stat. 2447, signed January 12, 1983, BLM provided that the leases might be reinstated if appellant wished to follow the procedures required under that law. Pursuant to the regulation at 43 CFR 3108.2-1(c)(2), BLM rejected the petitions for reinstatement on the ground that appellant's reasons did not constitute a justifiable delay and that he did not exercise due diligence in transmitting payment of the rentals.

On appeal appellant contests only the rejection of reinstatement under the law prior to P.L. 97-451 and contends his leases should be reinstated under the provisions of 30 U.S.C. § 188(b) (1976). He argues in essence that his excuse, i.e., being away from his office on business, is sufficient when taken with the date of the check, the date of the postmark, and the date it was received. It is noted that although the rental was due August 1, the envelope was postmarked August 3, 1983, and that the rental was received August 5, 1983.

[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), 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. Vernon L. Berg, 72 IBLA 211 (1983); Tenneco Oil Co., 71 IBLA 339 (1983); Phillips Petroleum Co., 71 IBLA 105 (1983). In absence of such proof, a petition for reinstatement is properly denied.

[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). As the record shows that appellant's payment was mailed on August 3, 1983, 2 days after it was due, BLM properly ruled that appellant had not met the standard for reasonable diligence. James M. Chudnow, 62 IBLA 13 (1982).

[3] The Board also agrees with BLM's conclusion that appellant's lack of reasonable diligence in the payment of the annual lease rent was not justifiable. In this regard the Board has previously stated that an "[u]ntimely payment of the annual rental may be justifiable for purposes of reinstatement if proximately caused by extenuating circumstances outside the lessee's control

which occurred at or near the anniversary date of the lease." James M. Chudnow, supra at 15. Applying this standard, the Board, on numerous occasions, has held that travel, either for business or pleasure, does not ordinarily prevent a diligent individual from making payment or arranging for others to make payment in his or her absence. Id. (and cases cited therein). Appellant's claim that he was away from his office on business is not sufficient to show that his delay in paying the rental was justifiable. Vernon L. Berg, supra. We find no merit in appellant's argument that the delay in this instance is de minimis. 30 U.S.C. § 188(b)(1976) clearly provides upon the failure of a lessee to pay his rental timely, the lease automatically terminates. The argument that the Department's notice of payment due is not worded strongly enough to warn the lessee of the danger of forfeiture of the lease is also lacking in merit. Those who deal with the Government are presumed to have knowledge of the law and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). The notice of payment due is merely a courtesy notice and lessee must pay the rental whether or not he receives the notice. Melbourne Concept Profit Sharing Trust, 46 IBLA 87, 91 (1980).

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 affirmed.

Anne Poindexter Lewis  
Administrative Judge

I concur:

Will A. Irwin  
Administrative Judge

## ADMINISTRATIVE JUDGE GRANT CONCURRING:

I must concur in the result reached by my colleagues in the majority opinion. The decision of BLM must be affirmed on the ground that appellant has not shown that the late payment was either justifiable or not due to a lack of reasonable diligence. Such a showing is required as a prerequisite to reinstatement under the terms of 30 U.S.C. § 188(c) (1976).

A late rental payment may be considered "justifiable" where it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected lessee's actions in paying the rental. Getty Oil Co., 61 IBLA 226, 89 I.D. 26 (1982). As the majority notes this Board has held repeatedly that a business or pleasure trip does not ordinarily constitute a circumstance beyond a lessee's control justifying a late rental payment. James M. Chudnow, 62 IBLA 13 (1982).

Under the terms of the regulations governing reinstatement as they existed prior to the revisions effective August 22, 1983, "reasonable diligence" normally requires that rental payments be transmitted 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) (1982). Board cases interpreting this requirement have uniformly held that a rental payment mailed (as evidenced by the postmark on the envelope) after the due date for the rental does not constitute due diligence. See, e.g., James M. Chudnow, supra.

The regulation at 43 CFR 3108.2-1 has been revised effective August 22, 1983, to provide that a rental payment is "timely paid" where payment has been received within 20 days of the anniversary date and the remittance is postmarked on or before the anniversary date of the lease. 43 CFR 3108.2-1(a), 48 FR 33673 (July 22, 1983). <sup>1/</sup> However, this modified regulation cannot avail appellant as the remittance was postmarked after the anniversary date.

Reinstatement under section 401 of the Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447, 2462 (to be codified at 30 U.S.C. § 188(d) through 188(i)) which authorizes reinstatement in the absence of due diligence under certain stringent conditions (including payment of rental for noncompetitive leases of at least \$5 per acre) is not before the Board in this appeal. BLM properly notified appellant of this

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<sup>1/</sup> The revised regulation is worded in a manner which implies that the lease may be considered not to have terminated if the payment, postmarked by the anniversary date, is received within 20 days after the anniversary date. See 48 FR 33655 (July 22, 1983) (comments to regulatory revisions). Such an interpretation would run afoul of the unambiguous statutory provision that leases terminate automatically by operation of law "upon failure of a lessee to pay rental on or before the anniversary date of the lease" or the first official working day thereafter. 30 U.S.C. § 188(b) (1976). However, the regulation may provide an appropriate new standard for reasonable diligence under the reinstatement provisions.

option, but the record contains neither a petition for reinstatement filed under section 401 nor any adjudication thereof which may be reviewed. For the foregoing reasons, I would affirm the decision of BLM.

C. Randall Grant, Jr.  
Administrative Judge

