

Editor's note: Appealed -- Reversed, Civ.No. C84-0249 (D.Wyo. Nov. 21, 1984); appeal to circuit court -- dismissed at Gov't's request, No. 85-1116 (Feb. 21, 1985 9th Cir.)

NEWMAN PARTNERSHIP

IBLA 83-947

Decided March 20, 1984

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting automated simultaneous oil and gas lease application Part B. W 85605 and W 85750.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing

Where an automated simultaneous oil and gas lease application Part B, Form 3112-6a, does not contain a correct identification number in the circles under the space designated "MARK SOCIAL SECURITY NUMBER," it is not properly completed and is therefore unacceptable.

APPEARANCES: Edward B. Poitevent II, Esq., and Cecily S. Henson, Esq., New Orleans, Louisiana, for Newman Partnership, appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

An appeal has been filed by Newman Partnership (Newman) from the August 2, 1983, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting its simultaneous oil and gas leasing application for parcels WY-294 and WY-440 (W 85605 and W 85750, respectively) in the May 1983 drawing. Part B of the application shows Newman's correct identification number, A 820 10 626, but the circles below that number are filled in showing the identification number as A 820 10 525.

In the statement of reasons for appeal it is not disputed that the discrepancy exists; it is contended that the basis for rejection of Newman's application was a "nonsubstantive" error which is not sufficient to warrant such rejection. In support of this contention it is stated that the correct information was present on the application and available to BLM as evidenced by BLM having ascertained the correct identification number. Moreover, Newman alleges that the rule requiring a correct identification number has been inconsistently applied and a rejection based on failure to comply with this inconsistently applied rule violates due process.

[1] The regulation 43 CFR 3112.6-1(a) (1982) clearly provides that an application will be rejected if not filed in accordance with 43 CFR 3112.2

(1982). ^{1/} The regulation 43 CFR 3112.2-1(g) (1982) requires that applications be "properly completed." Although failure to correctly complete the applicant's identification number is not expressly included among defects listed in 43 CFR 3112.5 (1982), that omission does not preclude denial of the application. Donald E. Hook, 76 IBLA 367 (1983).

Newman relies on several decisions which it argues supports the proposition that a lease application should not be rejected when it contains nonsubstantive error which creates no burden on administrative processing. The cases presented in support of this argument focus on errors which did not postpone or preclude processing of the form by BLM. However, the Secretary can properly adopt per se rules if he deems them useful in the administration of the leasing program, provided there is notice of the rules and they are consistently applied. Brick v. Andrus, 628 F.2d 213 (D.C. Cir. 1980).

A simultaneous oil and gas lease application must be filed on a form approved by the Director, BLM. 43 CFR 3112.2-1(a) (1982). Beginning on January 1, 1982, the form approved by the Director, BLM, for use in the Wyoming State Office is the automated simultaneous oil and gas lease application. 43 FR 55783 (Nov. 12, 1981). The complete automated application consists of two parts. Part A, Form 3112-6, is submitted only once and enables BLM to record the applicant's name and address. Part B, Form 3112-6a, identifies all parcels which the applicant desires to lease and a separate Part B is submitted for each drawing.

All Part B filings must correspond with the Part A filing on record. With regard to the identification number, Part B instructions direct the applicant to "print in the appropriate squares the number used by the applicant on Part A and mark the corresponding circles." Compliance with this rule will identify the application as distinctly that of the applicant when it is processed by machine. Shaw Resources, 79 IBLA 153, 91 I.D. ___ (1984).

Newman directs attention to the fact that after its Part B filing was processed and selected with first priority, BLM was able to identify its application and argues that this action evinces that its error was inconsequential and nonsubstantive. Its Part B filing was certainly received without the type of defects which would prevent it from being entered in the drawing. However, after it was processed, the computer apparently could not match the

^{1/} The regulations cited in the text of the opinion are those in effect when Newman's application was filed. 43 CFR Subpart 3112 was amended in 48 FR 33648, 33678-80 (July 22, 1982), effective Aug. 22, 1983.

The newly promulgated 43 CFR 3112.3(a), 48 FR 33679, provides: "Any Part B application form which, in the opinion of the authorized officer: * * * (2) Is received in an incomplete state or prepared in an improper manner; or (3) Is received in a condition that prevents its automated processing; * * * shall be returned to the remitter as unacceptable." The new 43 CFR 3112.2-1(e), 48 FR 33678, requires applicants to enter an identification number on the application, or be assigned one, and to use the same number for all filings.

successful Part B filing with a Part A filing on record and thus identify the application as distinctly belonging to Newman. Cf. Satellite Energy Corp., 77 IBLA 167 (1983). Because of this failure of the Part B filing to be processed routinely after the selection, it was accordingly rejected. See 43 CFR 3112.5(b) (1982). In order to determine the identity of the applicant, it became necessary for BLM to accord the Part B filing individual attention. Such activity does not promote the efficient processing of applications and is contrary to the purposes for adopting the automated processing program. See 43 FR 55783 (Nov. 12, 1981); Shaw Resources, Inc., supra.

When dealing with the Government, a person is presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 322 U.S. 380 (1947). Appellant was on notice that the approved application must be properly completed and filed, which means it must be received in a manner that does not prevent automated processing, including the proper indication on Form 3112-6a of the identification number used on the corresponding Form 3112-6. 47 FR 53508 (Nov. 26, 1982). Indeed, the May 1983 listing by the Wyoming State Office, BLM, of the lands to be offered for simultaneous filing also warned applicants that forms which indicated incomplete or improper identification numbers would be considered unacceptable.

Appellant adverts to Conway v. Watt, 717 F.2d 512 (10th Cir. 1983), in which the Court reversed the Department's rejection of an oil and gas lease application which was undated. The Court found that notwithstanding the fact that the entry of a date within the filing period was required by regulation, the omission was a "trivial defect" and a "non-substantive error." 717 F.2d at 516. Appellant equates the mis-matching of the identification numbers on Parts A and Part B with the omission of the date, contending that the mismatch of numbers is likewise trivial and non-substantive. We disagree.

Even though there is no showing of fraud in this case, the requirement for proper completion of identification numbers must be enforced by denial of an application if failure to do so would render the system vulnerable to fraud by enabling people to file multiple applications without the possibility of being detected. Were we to hold that an oil and gas lease applicant who has placed an improper identification number on his form could nevertheless be issued a lease, unscrupulous participants in the system would recognize they could increase their chances of winning a parcel by filing several applications under fictitious numbers, and if one of the applications wins, then claim the error was merely inadvertent and assert entitlement to receive the lease. The subsequent inquiry envisioned by the Court in Conway would be fruitless in eliciting a truthful answer or in developing the evidence necessary to show the fraud actually occurring. If the Government is required to accept applications bearing identification numbers other than the ones designated, the Government is deprived of a means to assure that no applicant has filed more than one application per parcel. While BLM could manually examine each application form filed for a particular parcel to see if there is another application bearing the applicant's name or some variation thereof (see Brick v. Andrus, 628 F.2d 213 (D.C. Cir. 1980)), such a procedure would defeat the purpose of automated processing, since the procedure was adopted

by the Department to eliminate the need for such labor-intensive adjudication. There can be no doubt that automated processing is a rational means of implementing the intention of the Mineral Leasing Act within the means provided to the agency by Congress. The automated filing system would not work if the Department were unable to strictly enforce the requirement that applicants use the proper identification number.

It must be the applicant who suffers the consequences of his own failure to correctly complete his application form, not the Government and/or the automated system, and those who rely on it.

Newman has not shown a departure from an otherwise consistent policy of rejecting applications made on the automated simultaneous oil and gas lease application form where the identification number is not properly indicated. In its statement of reasons, Newman even cites BLM Instruction Memorandum No. 82-193, dated January 8, 1982, which directs all BLM officers working with the automated application program that: "No Part "B" will be accepted * * * unless it has a correctly completed (darkened circle) social security number, employer identification number or Bureau of Land Management application (BAN) number."

As noted by the Court in Thor-Westcliffe Development, Inc. v. Udall, 314 F.2d 257, 260 (D.C. Cir. 1963):

[T]he history of the administration of the statute [the Mineral Leasing Act] furnishes compelling proof, familiar to the membership of Congress, that the human animal has not changed, that when you determine to give something away, you are going to draw a crowd. It is the Secretary's job to manage the crowd while complying with the requirements of the Act.

The "crowd" has not diminished. In the May 1983 drawing, the Wyoming State Office, BLM, processed 118,360 simultaneously filed oil and gas lease applications, including the two here at issue.

This Department has, within the past two years, completely revised the leasing program to centralize and automate the simultaneous filing system in an effort to make it more efficient and less costly. This was not easily accomplished. Regulations were re-written, personnel changes were made, forms replaced, etc., all to take advantage of the modern technology available for this purpose. If the Secretary cannot require that an applicant file applications in correct form which are machine readable and which do not require individual human analysis for identification, the value of the revised system could be substantially diminished.

However, as we recently held in Shaw Resources, Inc., supra, an error of this nature renders the applications "unacceptable" rather than subject to "rejection." This requires return of all filing fees associated with the particular filing except for \$75, which is retained by BLM.

Accordingly, 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 as modified.

Edward W. Stuebing
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

R. W. Mullen
Administrative Judge

