

HOWELL ROBERTS SPEAR

IBLA 83-706; IBLA 83-746

Decided April 6, 1984

Appeal from decisions of the Wyoming State Office and the New Mexico State Office, Bureau of Land Management, rejecting appellant's simultaneous oil and gas lease applications (NM-56668, NM-56768, and NM-56776 (Okla.)).

IBLA 83-706, affirmed in part, reversed in part and remanded.  
IBLA 83-746, affirmed as modified.

1. Oil and Gas Leases: Applications: Generally

When an oil and gas lease applicant files forms 3112-6 and 3112-6a which contain mismatched social security numbers, the application is rendered "unacceptable," regardless of when the error was discovered. Such an application is unacceptable at the time of filing and the subsequent erroneous inclusion in the selection process does not render the application "rejectable."

2. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases:  
First-Qualified Applicant

An applicant cannot receive any priority based on an application deemed to be unacceptable, even though the application is included in the selection process and selected with priority.

APPEARANCES: Jason R. Warran, Esq., Washington, D.C., for appellant; Lyle K. Rising, Department Counsel, Regional Solicitor's Office, Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Howell Roberts Spear has appealed from two decisions of the Bureau of Land Management (BLM) rejecting his simultaneous oil and gas lease applications. In March 1983, appellant filed for 113 parcels in New Mexico and 27 parcels in Utah in the simultaneous oil and gas lease drawing by submitting form 3112-6 (Automated Simultaneous Oil and Gas Lease Application--Part A) and two executed forms 3112-6a (Automated Simultaneous Oil and Gas Lease Application--Part B) accompanied by filing fees totaling \$10,500 (\$75 per tract). Part A and the two Part B's were submitted to the Wyoming State Office and were processed prior to rejection. Appellant did not

receive first priority with respect to any of the Utah tracts but received first priority with respect to three New Mexico tracts.

The first decision, issued by the Wyoming State Office, BLM, on May 10, 1983, rejected the applications because the Social Security/Employee Identification Numbers shown on Part A of appellant's application did not match with the corresponding number on either Part B form. Appellant filed a request for reconsideration of the May 10, 1983, decision, requesting refund of the entire amount of the filing fee for both the New Mexico and Utah applications (\$10,500). In a decision dated May 23, 1983, the Wyoming State Office denied appellant's request for refund of any of the filing fees.

The second decision, issued by the New Mexico State Office, BLM, on June 8, 1983, also rejected appellant's applications filed for the New Mexico parcels because of the mismatched Social Security/Employee Identification Numbers. The New Mexico decision noted that the applications had been drawn with first priority for parcels NM 143, NM 243, and NM 251. These first-priority applications were given serial numbers NM-56668, NM-56768, and NM-56776 (Okla.), respectively.

Appellant subsequently appealed both the Wyoming and New Mexico State Office decisions to this Board, and requested that the two appeals be consolidated. <sup>1/</sup> The motion for consolidation was granted on July 14, 1983. A statement of reasons, answer, and reply were subsequently filed.

When completing Part A and Part B, an applicant is instructed to print his social security number in designated squares and mark the computer readable circles ("bubbles"), below the numbers corresponding to the printed number. The Part A form completed by appellant contained the correctly marked social security number bubbles, but the Part B forms contained an error in marking the social security number bubbles. Appellant had inadvertently marked one of the bubbles incorrectly on each of the Part B forms (Statement of Reasons at 2-3). Appellant admits that the error was caused by him, but argues that the applications should have been found to be unacceptable, rather than rejected.

[1] The facts in this case are very similar to a case recently decided by this Board. In Shaw Resources, Inc., 79 IBLA 153, 91 I.D. (1984), which was decided en banc by this Board, the distinction between an application which is "unacceptable" and an application which is "rejected" was discussed in detail. The distinction is significant. When an application is rejected the applicant forfeits the entire filing fee. On the other hand, if an application is unacceptable, the applicant forfeits \$75 as a processing fee, and the balance of the filing fee is refunded. In this case, the difference is a matter of \$10,350 (\$10,500 less \$75 for each of the two applications).

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<sup>1/</sup> Appeal of the Wyoming State Office decision was docketed as IBLA 83-706. Appeal of the New Mexico State Office decision was docketed as IBLA 83-746.

A mismatched Part A and Part B renders the application "unacceptable" under the regulations, regardless of when the error was discovered. Such applications are unacceptable at the time that they are filed and the subsequent erroneous inclusion in the selection process does not render the applications "rejectable." Shaw Resources, Inc., *supra* at 176, 91 I.D. at \_\_\_\_.

[2] Appellant's error in completing the Part B forms rendered the applications unacceptable, and appellant cannot receive any priority with respect to any tracts applied for. Therefore, although the New Mexico State Office properly determined that appellant did not receive any priority with respect to the New Mexico tracts, we find that the applications should be deemed unacceptable, rather than rejected. For that reason, we affirm the decision of the New Mexico State Office, as modified.

Accordingly, 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 New Mexico State Office (IBLA 83-746) is affirmed as modified and the decision of the Wyoming State Office (IBLA 83-706) is affirmed in part and reversed in part and the case file is remanded to the Wyoming State Office for a return of a portion of the filing fees tendered in accordance with the decision herein.

R. W. Mullen  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

Will A. Irwin  
Administrative Judge

