

STELLA O. REDPATH

IBLA 83-347; IBLA 83-523

Decided April 13, 1984

Appeal from decisions of the Wyoming and Montana State Offices, Bureau of Land Management, rejecting simultaneous oil and gas lease applications, W-83080 and M-56748.

Affirmed as modified and remanded.

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

An automated simultaneous oil and gas lease application form Part B (form 3112-6a) which bears a different identification number in the space designated "MARK SOCIAL SECURITY NUMBER" than the identification number entered on Part A (form 3112-6) of applicant's lease application form is not properly completed and must be deemed unacceptable.

APPEARANCES: Stella O. Redpath, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Stella O. Redpath appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated December 22, 1982, rejecting simultaneous oil and gas lease application, W-83080, for failure to properly complete the automated application form (3112-6a) (June 1981).

The BLM decision stated in part: "Part 'B' of your application, * * * shows your BAN identification number as A820 10 785. However, Part 'A' of your application reflects your identification number as 3012 26 256."

Appellant submitted an automated simultaneous oil and gas lease application (Part B) for 25 parcels on the September 1982 list of parcels available for simultaneous drawing, posted by the Wyoming State Office. The filing fee tendered therewith, at \$75 per parcel, was a total of \$1,875. Appellant's application was selected with first priority for parcel WY-431. Part B of the application, Form 3112-6a (June 1981), includes a section designated "MARK SOCIAL SECURITY NUMBER." The number used in Part B of appellant's application (A82010785) did not match the number appearing in the "SOCIAL SECURITY NUMBER" section of Part A of the application (301226256). BLM cited 43 CFR 3112.2-1(g) (1982) and 3112.6-1(a) (1982) as controlling and rejected the application as improperly completed. BLM also made reference to

Instruction Memorandum No. 82-193, dated January 8, 1982, which states in part "no Part B [form 3112-6a] 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."

Redpath has also appealed a similar decision of the Montana State Office, BLM, rejecting her simultaneous oil and gas lease application, M-56748, for the same reason. This application was drawn with first priority for parcel MT-259 in the September 1982 list of lands available for simultaneous filing posted by the Montana State Office, BLM. Appellant's application (Part B) identified 11 parcels on the list and was accompanied by a filing fee of \$825 (\$75 per parcel). Once again, Part B of appellant's application was marked with BLM applicant number (BAN) A82010785 although Part A on file contained appellant's social security number (301226256). In both cases, Part B was executed by appellant's filing agent on September 20, 1982.

On appeal, appellant states that she was notified by the Wyoming State Office, BLM, that she had been assigned BLM applicant number (BAN) A82010785, which she was to use on all future simultaneous oil and gas filings submitted to the Wyoming State Office. She has tendered a copy of an unaddressed and undated letter from the Wyoming State Office, BLM, assigning a BAN to the recipient and directing use of this identification number on future simultaneous oil and gas filings. Appellant contends that she complied with the instructions contained in the letter and requests that the BLM decisions be rescinded and that the leases be awarded to her. Appellant has tendered with her appeal a copy of a Part A form bearing her name and BAN A82010785 which have been printed by machine on the form. We have consolidated the cases for consideration on appeal in light of the identical issue.

We observe generally that under the Mineral Leasing Act, the Department is authorized to issue a noncompetitive oil and gas lease only to the first-qualified applicant. See Udall v. Tallman, 380 U.S. 1 (1965); 30 U.S.C. § 226(c) (1976). With respect to noncompetitive oil and gas leases issued pursuant to the simultaneous filing procedures, a drawing is held to determine priority of consideration. 43 CFR Subpart 3112. The Secretary is bound by his regulations and may not justify a departure in a single case from an otherwise consistent policy of not accepting applications that do not conform to the regulations. Fen F. Tzeng, 68 IBLA 381, 385 (1982); see McKay v. Wahlenmaier, 226 F.2d 35, 43 (D.C. Cir. 1955).

Under the regulations in existence prior to inauguration of the automated simultaneous procedures, the Board consistently held that failure to complete properly the information required on a simultaneous oil and gas lease application renders the filing defective and requires rejection of the offer under 30 U.S.C. § 226(c) (1976). H. L. McCarroll, 55 IBLA 215, 216 (1981). The regulations in effect at the time appellant's applications were filed provide that an application consists of an approved form "completed, signed and filed pursuant to the regulations in this subpart" and that the "properly completed and signed lease application be filed in the proper office of the Bureau of Land Management." (Emphasis added.) 43 CFR

3112.2-1(a) and (g) (1982). ^{1/} The proper completion of a lease application is a mandatory requirement and the Board has long held that failure to properly complete such an application must result in rejection of the application. 43 CFR 3112.6-1(a) (1982); Nancy Y. Otani, 58 IBLA 38 (1981).

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 consisting of Part A (Form 3112-6) and Part B (Form 3112-6a). 46 FR 55783 (Nov. 12, 1981). Use of the automated simultaneous application forms was extended to the Montana State Office, BLM, effective September 1, 1982. 47 FR 31968 (July 23, 1982). The automated form, which is machine readable, is designed to accommodate the automated processing of simultaneous oil and gas lease applications.

The application form consists of two Parts, A and B. Part A, which should be submitted only with the applicant's first filing under the automated process, enables BLM to record the applicant's name, address, and identification number. Part B identifies all parcels which the applicant desires to lease on a given drawing list and a separate Part B is submitted for each drawing. The identification number appearing on both parts is the coordinating feature between them. Although the number is designated "SOCIAL SECURITY NUMBER" on the form, it may be a person's social security number, a business entity's employer identification number, or a number assigned by BLM. The number entered on Part A is coordinated with all subsequently filed Parts B.

The instructions on Part A of automated Form 3112-6 provide: "If an applicant has no social security number or employer identification number or does not wish to disclose such a number, leave the Social Security Number block blank. BLM will assign an applicant number which must be used for all future filings." A notice appearing on both Parts A and B reads, "The Paperwork Reduction Act of 1980 (44 U.S.C. 35) requires us to inform you that: This information is being collected to enter this application in an automated drawing. This information will be used to establish priority. The obligation to respond is required to obtain a benefit."

In response to appellant's allegation on appeal, this Board requested further information from BLM regarding the BAN used by appellant on her application and the method by which it was assigned. BLM responded that only one BAN is assigned to an applicant and that the BAN used by appellant on Part B has been assigned by BLM to R. J. Hammer. BLM has advised that BAN A82010785 was assigned to Hammer on March 29, 1982, in response to his forms (Parts A and B) filed in March 1982. Appellant also filed forms (Parts A and B) in her name in March 1982. As she used her social security number on Part A, no BAN was assigned to appellant by BLM. BLM acknowledges that the notice of assignment of BAN tendered with the appeal has no address showing to whom it was addressed or where it was sent. Inquiry of the telephone company directory

^{1/} The current regulation, effective Aug. 22, 1983, provides that an applicant shall enter on the simultaneous application his social security number or, in lieu thereof, his BAN supplied by BLM. 43 CFR 3112.2-1(e). 48 FR 33678 (July 22, 1983).

assistance by BLM disclosed a telephone listing for Hammer at the same address used by appellant thus raising the possibility that appellant had seen Hammer's notice assigning his BAN. Further, BLM contends that the Part A form, a copy of which was submitted by appellant with her appeal, bearing appellant's name and Hammer's BAN had never been filed with them. BLM contends it would have been processed had it been received. The BLM records show only one Part A on file for appellant which bears her social security number.

Further information regarding this case was also sought from appellant. In response, appellant has indicated that she and her husband, Roger J. Hammer, have both participated in the automated simultaneous filing procedures. She believes that the notice of assignment of BAN was received in August of 1982, stating that she "assumed it had been sent to me and had my filing service follow the instructions in that letter." Appellant contends that her filing service filed a Part A form with BLM in her name marked with BAN A82010785 on September 20, 1982, with her Part B.

Appellant must accept the responsibility for making the erroneous assumption that the BAN was assigned to her. She had previously filed a Part A form bearing her social security number. The instructions on Part A indicate that Part A should only be submitted once with the first filing. Further, the instructions disclose that a BAN is only assigned if applicant does not tender Part A with either a social security number or an employer identification number. Since her husband was also participating in the simultaneous filing procedures, appellant could not be justified in assuming that the notice was sent to her rather than her husband. In addition, BLM has submitted a copy of an additional notice regarding assignment of BAN A82010785 clearly addressed to Roger J. Hammer at his address of record with BLM (which was different than appellant's address). A certified mail return receipt card shows that the notice was received at Hammer's address of record on August 14, 1982, well in advance of appellant's September 20, 1982, applications.

[1] All Part B filings must correspond with a Part A filing on record. 2/ 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." (Emphasis added.) As the Board noted in Satellite Energy Corp., 77 IBLA 167, 90 I.D. 487 (1983), the new forms were adopted to accommodate the automated processing of simultaneous oil and gas lease applications in order to expedite lease issuance and reduce the paperwork burden on the public. Entry of the appropriate identification number in a form which is machine readable (by darkening the appropriate circles) is required to relate the successful application to the applicant whose name and address appear on

2/ Appellant alleges that a second Part A form bearing her husband's BAN was filed with BLM on her behalf by her filing service. In response to this Board's inquiry, BLM states that they have no record of such a filing. The presumption of regularity in the actions of public officials--that they have not lost legally significant documents filed with them--gives rise to an inference that no further Part A was received by BLM in appellant's name. See Lynda Bogley Doye, 65 IBLA 340 (1982). Appellant's allegation that her filing agent tendered another Part A is not sufficient to rebut this presumption.

Part A of the application on file. Satellite Energy Corp., supra. 3/ Without using the same number as used in Part A, Part B cannot be efficiently processed. The rule requiring proper completion of the approved application form promotes the efficient administration of the simultaneous oil and gas leasing program in view of the number of applications submitted.

The regulation at 43 CFR 3112.6-1(a) (1982) clearly provided that an application will be rejected if not filed in accordance with section 3112.2. 43 CFR 3112.2-1(g) (1982) required that applications be "properly completed." 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 form, 3112-6a, must be properly completed. We cannot condone a departure from an otherwise consistent policy of not accepting applications that do not conform to the Department's regulations. A "qualified applicant" is not merely one who is qualified to hold an oil and gas lease. A "qualified applicant" must also have completed and filed a valid application. Fen F. Tzeng, supra at 386. Thus, the decisions appealed from must be affirmed to the extent they declined to find appellant to be the first-qualified applicant.

Subsequent to the drawings involved in these appeals, BLM adopted revised regulations governing the simultaneous filing procedures which were specifically designed for administration of the automated simultaneous filing process. Thus, the regulations were revised to provide at 43 CFR 3112.3(a) that:

- (a) Any Part B application form which, in the opinion of the authorized officer:
- (1) Is not timely filed in the Wyoming State Office; or
 - (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; or
 - (4) Is received with an insufficient fee: shall be returned to the remitter as unacceptable.

48 FR 33679 (July 22, 1983). In the context of the automated simultaneous filing procedure where one Part B application may describe numerous parcels involving thousands of dollars in filing fees, the distinction between an application returned as unacceptable and an application rejected is significant since in the latter case all filing fees are retained by BLM whereas in the former case a single \$75 processing fee is retained and the balance of the fees are returned. 43 CFR 3112.3(b), 48 FR 33679. Subsequently, the

3/ In Satellite Energy Corp., supra, the Board held that where the proper identification number was marked in the circles in a form which was machine readable the application was properly completed and the failure to write out the digits of the number was an inconsequential omission not requiring rejection.

regulation at 43 CFR 3112.3(a) defining an "unacceptable" application has been further revised:

(a) Any Part B application form shall be deemed unacceptable and a copy returned if, in the opinion of the authorized officer, it:

(1) Is not timely filed in the Wyoming State Office; or

(2) Is received in an incomplete state or prepared in an improper manner that prevents automated processing; or

(3) Is received in a condition that prevents automated processing; or

(4) Is received with an insufficient fee.

49 FR 2113 (Jan. 18, 1984).

In a recent case considered by this Board *en banc*, Shaw Resources, Inc., 79 IBLA 153, 91 I.D. 122 (1984), we held that the scope of the definition of an application which is prepared in a manner that "prevents automated processing" is broad enough to include applications with mismatched identification numbers on Part A and Part B. Further, the Board held that the regulation defining such applications as unacceptable is phrased in mandatory terms and that such applications must be deemed "unacceptable" under the revised regulations whether or not the defect is discovered prior to inclusion of the application in the selection process. 79 IBLA at 176-77, 91 I.D. at 135. Because the application of these revised regulations to appellant's case would benefit appellant by requiring that her Part B applications be treated as unacceptable, thus mandating refund of fees less a \$75 filing fee for each unacceptable Part B application, whereas the applications would otherwise be subject to rejection with retention of all fees, the Board has held it appropriate to apply these regulations to cases such as this. Shaw Resources, Inc., *supra*. Accordingly, the BLM decisions are affirmed as modified to find appellant's Part B applications unacceptable, thus allowing return of fees tendered less a \$75 filing fee for each Part B application.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed as modified and the cases are remanded.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Gail M. Frazier
Administrative Judge

