

TILLMAN V. JACKSON

IBLA 84-25

Decided April 30, 1984

Appeal from decision of Arizona State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application A-18867.

Affirmed as modified and remanded.

1. Oil and Gas Leases: Applications: Drawings

A simultaneous oil and gas lease application was not properly completed in accordance with 43 CFR 3112.2-1(g) (1982), where the identification numbers on Parts A and B of the application do not match. Such an error renders the application unacceptable, regardless of whether it was discovered before or after the drawing. The applicant is entitled to a return of his filing fees, minus a \$75 processing fee, and the Board will remand the case to the Bureau of Land Management for that purpose.

APPEARANCES: Tillman V. Jackson, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Tillman V. Jackson has appealed from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated September 21, 1983, rejecting his simultaneous oil and gas lease application A-18867.

Appellant's lease application was the only application filed for parcel AZ-335 in the July 1983 simultaneous oil and gas lease drawing. <sup>1/</sup> In its September 1983 decision, BLM rejected appellant's application because the social security identification number (SSN) on Part B of his application (414461845) did not match the SSN on Part A of his application (404461845). We note that the record indicates that the SSN on Part A of appellant's application was written as 414461845 but that the number is incorrectly entered in the machine-readable portion ("bubbles") on the Part A form.

In his statement of reasons for appeal, appellant contends that he should not be deprived of a noncompetitive lease where the mismatching of

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<sup>1/</sup> Appellant also filed for parcel AZ-339, but was not drawn with first priority.

Parts A and B of his application was based on a "marginal error," *i.e.*, an incorrect entry on one of the bubbles in the SSN portion of Part A, and there was no intent to defraud the Government. Appellant further states that the error was de minimis because BLM was ultimately able to match up the two parts of his application. Finally, appellant states that he should not be deprived of a lease on parcel AZ-335 where the intent of the statute is to lease available Federal land, especially where he is the sole applicant for that land.

[1] It is now well established that an application is "unacceptable" where Part B (Form 3112-6a (June 1981)) was not properly completed by insertion of the same identification number as indicated on Part A (Form 3112-6 (June 1981)). <sup>2/</sup> Howell Roberts Spear, 80 IBLA 150 (1984); Amy Polak, 79 IBLA 391 (1984); Shaw Resources Inc., 79 IBLA 153, 91 I.D. 122 (1984). The necessity for proper completion of Part B in this manner is based on the automated nature of the current simultaneous oil and gas leasing system and the fact that, because Part A identifies the applicant and is matched to Part B only by the identification number given on both forms, the efficient computer processing of Part B and, indeed, eventual issuance of a lease, would otherwise be impaired. <sup>3/</sup> The problem is compounded by the fact that BLM has processed over one hundred thousand applications in one drawing period. Therefore, the regulatory requirement mandating proper completion of application forms promotes the efficient administration of the entire simultaneous leasing system.

The automated nature of the simultaneous leasing system also underscores the importance of the machine-read portion of Parts A and B. In each case, there are boxes for an applicant to write his identification number, with corresponding circles underneath each number which must be appropriately blackened. It is the darkened circles, not the written numbers, that are read by the computer and, thus, link the two forms. Accordingly, in Satellite Energy Corp., 77 IBLA 167, 90 I.D. 487 (1983), we recently held that Part B of an application had been properly completed where the blackened circles on the form could be matched with a Part A form, even though no numbers had been entered in the boxes. In the present case, the correctly entered machine-read identification number on Part B of appellant's application did not match

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<sup>2/</sup> In particular, 43 CFR 3112.2-1(g) (1982) provided that the "properly completed and signed lease application shall be filed in the proper office of the Bureau of Land Management." Current regulations specifically require an applicant to enter his identification number "on the lease application" and to "use the same number for all filings." 43 CFR 3112.2-1(e) (48 FR 33678 (July 22, 1983)).

<sup>3/</sup> Part A, unlike Part B, provides the applicant's name and address in machine-readable form and is coordinated with all subsequently filed Part B forms. Part B, on the other hand, identifies those parcels in a particular simultaneous lease drawing which the applicant desires to lease. The identification number, which is the only machine-readable number common to both forms, coordinates the two forms. This number may be a person's SSN, as in the present case, a business entity's employer identification number, or a number assigned by BLM. The instructions on Part B notify applicants to print "the number used by the applicant on Part A and [to] mark the corresponding circles."

the similar number on Part A because the numbers on Part A had been entered incorrectly. Thus, the vital link was missing. In such circumstances, it is irrelevant that BLM might be able to subsequently match Parts A and B of appellant's application by hand sorting the forms. Appellant's failure to properly complete Part A of his simultaneous oil and gas lease application does not comply with the requirement of 43 CFR 3112.2-1(g) (1982), and the application is unacceptable for that reason.

Effective August 22, 1983, and January 18, 1984, the Department revised the regulations applicable to the simultaneous oil and gas leasing system. See 48 FR 33648 (July 22, 1983); 49 FR 2110 (Jan. 18, 1984). These regulations again draw the distinction between unacceptable applications and those which are subject to rejection. In particular, 43 CFR 3112.3(a) (48 FR 33679 (July 22, 1983), as amended at 49 FR 2113 (Jan. 18, 1984)), provides that a Part B application form shall be deemed unacceptable and returned if it is "received in an incomplete state or prepared in an improper manner that prevents automated processing." Moreover, 43 CFR 3112.3(b) (48 FR 33679 (July 22, 1983), as amended at 49 FR 2113 (Jan. 18, 1984)), provides that, when Part B application forms are returned as unacceptable, "a \$75 processing fee shall be retained and the balance of the fees, if any, shall be returned."

In Shaw Resources, Inc., supra, we held that an incorrectly marked Part A or Part B form, resulting in a mismatched Part A and Part B renders an application unacceptable even where the application has been included in the drawing, and that the applicant was, therefore, entitled to the return of the filing fees tendered with the applications, after assessment of a \$75 processing fee per application form. We adopt the same approach herein. BLM is directed to treat appellant's application as being unacceptable and to return appellant's filing fees, minus \$75.

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 and the case is remanded to BLM for further action consistent herewith.

R. W. Mullen  
Administrative Judge

I concur:

Franklin D. Arness  
Administrative Judge

## ADMINISTRATIVE JUDGE BURSKI CONCURRING:

I agree with the majority that, where a defect in an application filed under the automated simultaneous oil and gas leasing system renders the application "unacceptable" under the guidelines we recently enunciated in Shaw Resources, Inc., 79 IBLA 153, 91 I.D. 122 (1984), the application is not subject to cure even where it was the only one filed for a particular parcel. However, inasmuch as it is also my view that the same result may not necessarily obtain where an application is subject to "rejection," I think it useful to more fully explore the reason why an "unacceptable" application may not be cured.

The general proposition that substantive defects in an application filed under the simultaneous system are not subject to subsequent curative action has been so oft-repeated that it needs no citation. The justification for this proposition has also been expressed in cases too numerous to mention. In short, the Board has consistently stated that a deficiency in a simultaneous application cannot be cured after the close of the filing period because to do so would improperly interfere with the rights of applicants who obtained second and third priority. <sup>1/</sup> Appellant in the instant case suggests that, since there were no other applicants for the parcel in question, allowing him to cure the defect in his application would not violate either the rationale of past Board decisions or improperly denigrate any third-party rights.

As we noted in Shaw, an application is properly deemed "unacceptable" where it contains any deficiency which "prohibits the computer from fully completing the automated program, including not only the selection of applications for specific parcels, but the matching of Part B with Part A." Id.

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<sup>1/</sup> I recognize that, under the new simultaneous procedures promulgated in July 1983, BLM will only draw one application for each parcel. See 43 CFR 3112.4-1(a) (1983). Thus, there will never be an individual who has second or third priority. The animating principle of the prior Board precedents, however, will still be applicable. Under the new procedures, where the application drawn with priority is either rejected or deemed to have been unacceptable, a redrawing will take place including all other applications filed for that parcel during the filing period. Thus, every applicant who filed an application to lease a specific parcel of land has an opportunity, based on that application, to obtain a lease should the application of the individual drawn with priority be rejected or deemed unacceptable.

This is in marked contrast to adjudications under the former system. Those drawn without priorities could not possibly obtain a lease on the basis of their applications, since, if all three priority applications were rejected, the land would be reposted for the filing of new offers, and, therefore, applications drawn without priority could never ripen into leases. Because of this, those individuals lacked standing to even protest issuance of the lease to a priority applicant. Under the new system, not only may any applicant protest issuance of the lease to the individual drawn with priority, but the subsisting possibility that another applicant may obtain the lease prevents the Board from allowing curative action of any substantive deficiency in an application where more than one person had filed for a specific parcel.

at 176, 91 I.D. at 134. While we noted that such applications should be screened out prior to the actual selection, it is obvious that this is not always possible and that occasionally an unacceptable application is drawn with priority. But, even though we recognized this possibility, we expressly held that where an application is, in fact, unacceptable, error on the part of BLM in processing the application form does not transform the form from one "unacceptable" to one which is "rejectable." Rather, the form remains "unacceptable" and, as such, is incapable of affording priority in a drawing.

The treatment of such forms as "unacceptable" derives from two independent considerations. First, to the extent that the deficiency on the form prevents complete computer processing, an applicant has not complied with the sine qua non for filing an application under the automated system. The whole purpose of the automated simultaneous system is to expedite both selection of priority applicants and ultimate lease issuance. To the extent that deficiencies caused by an applicant's carelessness would require that BLM go beyond the automated program and manually attempt to rectify the problem, such deficiencies directly undermine the whole purpose for instituting the automated simultaneous system in the first place.

On the other hand, recognizing that many of the errors which applicants make are due to inattention and simple carelessness rather than an intent to subvert the simultaneous system, the Department determined that "rejection" of the application form, with the necessary retention of all filing fees submitted therewith (see section 1401(d)(1) of the Omnibus Budget Reconciliation Act of 1981, 95 Stat. 748), would exact far too high a penalty for the infraction committed. Thus, the Department decided to treat these applications as "unacceptable" and assess a single \$75 processing fee for each deficient form, regardless of how much money had been tendered as filing fees under that form. As a necessary corollary of this procedure, however, an "unacceptable" application form must be deemed to constitute no proper application at all. As such, there is nothing which is properly subject to cure.

An application which is properly subject to "rejection" is, I believe, a different matter. Such an application contains no deficiency which prevents complete automated processing. Rather, because of a failure of the applicant to complete certain parts of the form which are not machine-readable, consisting of items which relate directly to efforts by the Department to police the simultaneous system so as to prevent abuse, an application selected for priority is properly subject to "rejection." As an example, the failure to disclose the identity of any party, in the business of providing assistance, who has assisted an applicant in the completion of the form normally necessitates rejection of the application, as this is a per se substantive deficiency which cannot be cured because any such curative action would improperly prejudice the rights of other applicants who had properly completed their applications.

If, however, it transpires that an application which contains an omission that would render it "rejectable" is the only application filed on a parcel, I do not think that the applicant should necessarily be barred from attempting to cure the deficiency after selection. I think the proper analysis in such a situation would be whether the deficiency which caused the application to be substantively incomplete was the result of inadvertence or an intentional attempt by an applicant to inhibit the Department's

efforts to police the simultaneous system. Dependent upon the result of such an analysis, the application might or might not be subject to cure. Obviously, however, this approach can only be applied where there is a single applicant, since the existence of rights in other applicants would, indeed, effectively preclude any action to cure such a deficiency if more than one application were filed for a parcel, even if the deficiency were the result of simple neglect.

I agree, however, that, where an application is properly deemed "unacceptable," it is not possible to "cure" the deficiency even where, as here, no proper application is filed. The majority correctly rejects the instant appeal.

James L. Burski  
Administrative Judge

