

CAREY D. McDANIEL

IBLA 84-79

Decided May 14, 1984

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting automated simultaneous oil and gas lease application W-86637.

Affirmed as modified.

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

An automated simultaneous oil and gas lease application Part B, form 3112-6a, which is unsigned is not properly completed and must be found to be unacceptable.

2. Oil and Gas Leases: Applications: Generally

Where an application form is unacceptable under the automated simultaneous oil and gas leasing system, all filing fees submitted with such form are returned, after assessment of a \$75 processing fee per application form, even if the deficiency which rendered the form unacceptable is not discovered until after selection of successful applications.

APPEARANCES: Shrader R. Miller, Esq., Louisville, Kentucky, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Carey D. McDaniel has appealed from a September 26, 1983, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his simultaneous oil and gas lease application which was selected with first priority on lease W-86637 for parcel WY-165 of the July 1983 notice of lands available, drawn in September of 1983. McDaniel's application was filed July 18, 1983. When the State Office reviewed his application they found appellant had failed to sign and date the application (Part B of form 3112-6a) and therefore rejected it.

In his statement of reasons appellant argues, citing Brick v. Andrus, 628 F.2d 213 (D.C. Cir. 1980), that the Department ought not to require a signature in addition to the information concerning the applicant which is furnished on the application form. Appellant contends he won, as a matter of

fact, and that the Department should not be permitted, for technical reasons, to deprive him of his prize, having waived any objection to his application when his application was included in the drawing. He also states the decision is unfair because he has previously submitted at least 25 properly signed forms, and that the handwriting on those forms is clearly the same as that appearing on the rejected form. Appellant asserts: "A signature in a lottery is a meaningless technical requirement. The winner either can or cannot pay for the lease that he wins" (Statement of Reasons at 2-3 (emphasis in original)).

[1] Appellant's reliance upon Brick v. Andrus, supra, is misplaced. In that case, the disappointed offeror whose offer had been drawn with first priority argued that the Department had waived any defects in his offer when it placed the entry into the drawing. The court did not rule on this argument. It did, however, find that the Secretary had failed to act consistently in dealing with defects of the kind created where, as in the case of Brick, his last name was not written first in order on the form then in use. The holding in Brick v. Andrus, therefore, is not persuasive here: The Department has consistently required a signature on the application form used in simultaneous oil and gas lease drawings, and has uniformly enforced that requirement. Similarly, appellant's argument that the Secretary may not reasonably require a signature is without merit. The Board has frequently held the signature is the applicant's (or offeror's) certification of all other statements made on the face of the application (or offer), and is essential to the Department's ability to police the system as only the signature brings into play the provisions of 18 U.S.C. § 1001 (1982). When an applicant fails to sign the application, he has also failed to certify to his qualifications to hold an oil and gas lease. And, because he has failed to do so, his application cannot be accepted. Thomas Buckman, 23 IBLA 21 (1975).

[2] 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). 43 FR 55783 (Nov. 12, 1981). The automated form, which is machine readable, is designed to accommodate the automated processing of simultaneous oil and gas lease applications. 46 FR 55783, 55784 (Nov. 12, 1981). 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 and address. Part B identifies all parcels which the applicant desires to lease and a separate Part B is submitted for each drawing. Part B contains the space for an applicant's signature.

Since in this case, Part B of the application has been submitted unsigned, the application has not properly been completed and is therefore properly classed as "unacceptable" under the Department's leasing regulations. This is so even though BLM did not discover the deficiency until after appellant's application had been selected with priority. In Shaw Resources, Inc., 79 IBLA 153, 177 n.10, 91 I.D. 122, 136 n.10 (1984), this Board recently held that failure to sign the application under such circumstances renders it unacceptable. In Shaw the Board emphasized that a deficiency of the sort which renders an application unacceptable requires the retention of a processing fee of \$75, with the balance of the filing fees associated with that application to be reimbursed to the applicant. The Board held that, as in this case, where:

[T]he signature space is left blank, the proper action by BLM is to treat the application as "unacceptable." The signature is a necessary prerequisite to the filing of any application, since without it the applicant has failed to seek the right to submit a lease for any parcel of land. In view of the extensive review of application forms which the Wyoming State Office already performs in its preprocessing, virtually no time need be expended to cull out those applications where the signature blank is unfilled. Since such a document does not, in law, constitute an application (see Superior Oil Co. v. Udall, 409 F.2d 1115 (D.C. Cir. 1969)), it must be deemed "unacceptable."

Shaw Resources, Inc., *supra* at 177 n.10, 91 I.D. at 136 n.10.

Upon discovery of this deficiency, therefore, BLM should have declared appellant's application "unacceptable," canceled the priority awarded, and refunded the filing fees, save for the processing costs.

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. BLM is directed to return the portion of appellant's filing fee as provided by 43 CFR 3112.3(a).

Franklin D. Arness
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge

