

FLOANNE ERVIN

IBLA 84-274

Decided May 29, 1984

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting appellant's simultaneous oil and gas lease application W-86583.

Affirmed.

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

Where an oil and gas lease offeror properly receives notice of his priority, and notice of the requirements that the rental payment must be paid and that the lease must be executed within 30 days, the failure to make the rental payment and execute the lease within the 30-day period will result in rejection of the application. The offeror's absence from his address of record when the notice was received at his address will not excuse noncompliance with 43 CFR 3112.6-1.

APPEARANCES: Floanne Ervin, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Appellant, Floanne Ervin, has appealed a December 28, 1983, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting her simultaneous oil and gas lease application W-86583, drawn with first priority for parcel WY-384 in the July 1983 simultaneous oil and gas lease drawing.

BLM rejected appellant's application because the rental payment and the executed lease agreements were not filed with BLM within 30 days from the date of receipt of the request. Appellant received the request on October 24, 1983, therefore the executed lease offers and the rental payment were due in BLM's offices on or before 4:30 p.m., November 23, 1983.

In rejecting appellant's application, BLM relied on 43 CFR 3112.6-1 and 43 CFR 3112.5-1(c). Subpart 3112.6-1 provides in part: "[T]he signed lease agreement and rental payment shall be filed in the proper BLM office within 30 days from the date of receipt of the notice, and shall constitute the applicant's offer to lease." Subpart 3112.5-1(c) states: "[t]he application of the first qualified applicant shall be rejected if an offer is not filed in accordance with § 3112.6-1 of this title."

In her statement of reasons, appellant argues that she was out of town on a business and personal trip when the lease agreement was received in her office on October 24, 1983. Appellant also argues that the lease agreement was delivered to her place of business and signed for by one of her employees and that she was not informed that the lease agreement was received at her office.

The regulations clearly mandate that the rental payment and executed lease agreement must be filed with BLM within 30 days from the receipt of the notice, and that failure to timely file will result in rejection of the application. In Jack Koegel, 30 IBLA 143 (1977), the appellant similarly argued that he was out of state when the notice was received. This Board rejected appellant's application in Jack Koegel, supra at 144, and reasoned that:

This regulation is reasonable and necessary to expeditious administration of the Bureau's business. The conduct of government business cannot be compelled to wait the pleasure or convenience of those persons who seek to deal with it. Failure to comply within mandatory time limits following service compels rejection of the offer. Robert D. Nininger, 16 IBLA 200 (1974), aff'd Nininger v. Morton, Civ. No. 74-1246, (D.D.C., March 25, 1975).

In Robert D. Nininger, this Board rejected the appellant's application because the rental payment was submitted late. In Nininger, the appellant unsuccessfully argued, as does appellant herein, that he was away when the notice was received at his address of record. In rejecting the application, this Board in Nininger reasoned that "the failure of the recipient [of the notice] to advise the lessee that the rental notice had arrived is not justification for a late payment." Id. at 202. Federal employees should not have to search for individuals who have neglected to arrange for their affairs so that they might receive official communication promptly. Id. See Norman K. Humstead, 12 IBLA 341 (1973); John Paul Pratt, 24 IBLA 110 (1976); Edgar C. Bennington, Jr., 28 IBLA 65 (1976); Edgar C. Bennington (On Reconsideration), 28 IBLA 355 (1977). "[T]he voluntary absence of a lessee from his home or office at the time near the date of a rental payment cannot constitute justification for a tardy tender." W. E. Hester, Jr., 18 IBLA 420, 421 (1975). As in Frank De Jong, 26 IBLA 327, 328 (1976), there is "no room for excuse -- it is mandatory that the rental payment must arrive at the proper BLM office" within 30 days.

In Dawson v. Andrus, 612 F.2d 1280 (10th Cir. 1980), the Tenth Circuit expressly followed Jack Koegel, supra, and Robert D. Nininger, supra, in holding that the rental payment must be timely received, or else the application will be rejected. Here, there is no reason to depart from the requirement of strict compliance with the regulations. E.g., Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd sub nom., Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976); Sorenson v. Andrus, 456 F. Supp. 499, 501 (D. Wyo. 1978). Strict compliance with these regulations is necessary to protect the rights of second- and third-qualified applicants. E.g., Bonita C. Ferguson, 61 IBLA 178 (1982); Ballard E. Spencer Trust, Inc., supra. "If the

Secretary is to fulfill his obligation to lease to the first qualified applicant, as strict a compliance with regulations as possible is necessary." Shearn v. Andrus, No. 77-1228, slip op. at 6 (10th Cir., Sept. 19, 1977).

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 Wyoming State Office, BLM, is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Franklin D. Arness
Administrative Judge

