

FRED WILLIAM BERGER

IBLA 84-272

Decided June 25, 1984

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application, W-86624.

Affirmed.

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

Where, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn applicant fails to submit his executed lease agreement and first year's advance rental payment within 30 days after receipt of notice to do so, as prescribed by 43 CFR 3112.6-1(a), his lease application must be rejected.

APPEARANCES: William W. Eckelkamp, Esq., Washington, Missouri, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Fred William Berger has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated December 29, 1983, rejecting his simultaneous oil and gas lease application, W-86624.

Appellant's lease application was drawn with first priority for parcel WY-152 in the July 1983 simultaneous oil and gas lease drawing. By decision dated October 21, 1983, BLM transmitted copies of lease offers with attached stipulations for execution by appellant. This decision contained the following language:

All copies of the executed lease offer, all copies of the executed stipulations, the first year's rental in the amount shown above and the duplicate copy of this letter, must be returned to this office within 30 days from the date of your receipt of this decision.

If the originals and all copies are not returned within the time allowed you will have failed to comply with the regulations, and your application will be rejected. [Emphasis in original.]

The record contains a return receipt card which indicates that appellant received the October 21, 1983, BLM mailing on October 25, 1983. In addition, the record indicates that appellant executed the copies of the lease offers and the stipulations on October 31, 1983, but that these documents and the first year's rental were not received by BLM until December 16, 1983.

In a December 29, 1983, decision, BLM rejected appellant's lease application for failure to submit timely the required documents, *i.e.*, by November 24, 1983, in accordance with 43 CFR 3112.6-1 and 3112.5-1(c). On January 24, 1984, appellant submitted a notice of appeal and statement of reasons.

In his statement of reasons for appeal, appellant states that he received the October 1983 BLM decision on October 25, 1983, and that on November 1, 1983, he forwarded the documents to the filing service which had assisted him in participating in the drawing, *i.e.*, Federal Oil and Gas Corporation (Federal Oil), Miami, Florida, in accordance with instructions given by Federal Oil. Appellant states that he was thereafter advised by the president of Federal Oil that Federal Oil was taking care of the matter. On December 14, 1983, 20 days after the deadline, he received the documents from Federal Oil and promptly mailed them to BLM. Appellant contends that he should not be penalized where he participated in the "government program" and relied on the advice of a third party, which was necessary in view of the complexity of the program.

It is well established that where a simultaneous oil and gas lease applicant is notified that he may file a noncompetitive oil and gas lease offer, *i.e.*, an executed lease agreement and the first year's rental payment, such an offer must be filed with the proper BLM office "within 30 days from the date of receipt of the notice" in accordance with 43 CFR 3112.6-1(a). ^{1/} Harold J. Norsoph, 78 IBLA 150 (1983). Failure to timely file properly results in rejection of the lease offer pursuant to 43 CFR 3112.5-1(c). ^{2/} S. H. Partners, 80 IBLA 153 (1984); see also Dawson v. Andrus, 612 F.2d 1280 (10th Cir. 1980). BLM has no authority to consider excuses for a late payment or to exercise discretion to accept a late payment under 43 CFR 1821.2-2(g), because of the intervening rights of the second- and third-priority applicants. Beverly J. Macdowell, 71 IBLA 23 (1983), and cases cited therein.

We do not believe, as appellant maintains, that the previously quoted instructions were "too complex" for the average person to follow. Rather, the failure to submit the documents in a timely manner apparently rests with appellant's agent, Federal Oil, which is not in any way connected with BLM or the Federal Government. Appellant has not been penalized by his participation in the simultaneous oil and gas leasing program, but, presumably, by his choice of and reliance on Federal Oil.

^{1/} This requirement was formerly codified at 43 CFR 3112.4-1(a) (1982).

^{2/} That provision, formerly codified at 43 CFR 3112.6-1(d) (1982), provides that: "The application of the first qualified applicant shall be rejected if an offer is not filed in accordance with § 3112.4-1 of this title."

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.

R. W. Mullen
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Edward W. Stuebing
Administrative Judge

