

Appeal from decision of Colorado State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application C-38052.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings

BLM may properly reject a simultaneous oil and gas lease application which is not signed within the appropriate filing period in accordance with 43 CFR 3112.2-1(c) (1982).

APPEARANCES: Thomas N. Gwyn, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Thomas N. Gwyn has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated January 10, 1984, rejecting his simultaneous oil and gas lease application C-38052.

Appellant's lease application was drawn with first priority for parcel CO-286 in the May 1983 simultaneous oil and gas lease drawing. In its January 1984 decision, BLM rejected appellant's application because the application was not dated within the May 1983 filing period, in accordance with 43 CFR 3112.2-1(c) (1982). The date on the application is November 24, 1982.

In his statement of reasons for appeal, appellant contends that he relied on a filing service, Trans World Resources Corporation (Trans World), in the preparation of his lease applications "for various drawings" and that Trans World must have used the form which he signed in November 1982 "instead of the correct one," in order to include him in the May 1983 drawing.

[1] The applicable regulation, 43 CFR 3112.2-1(c) (1982), provided that: "The date [on the simultaneous oil and gas lease application] shall reflect that the application was signed within the filing period." The regulations applicable to the simultaneous leasing system were revised effective August 22, 1983, but without any change in this regulatory requirement. See 48 FR 33678 (July 22, 1983).

In Conway v. Watt, 717 F.2d 512 (10th Cir. 1983), the court concluded that the Department had acted incorrectly in rejecting a drawing entry card (now a simultaneous oil and gas lease application) where the applicant had failed to date the application. ^{1/} The court concluded that:

Although offers to lease must strictly comply with the Secretary's regulations, this court has consistently intimated that nonsubstantive errors are inappropriate grounds for finding DEC [drawing entry card] applications defective. Ahrens v. Andrus, [690 F.2d 805, (10th Cir. 1982)] at 808; Winkler v. Andrus, 594 F.2d 775, 777-78 (10th Cir. 1979). * * *

Inasmuch as the great weight of judicial authority places little or no emphasis on the absence of a date, Conway's failure to date his DEC would indeed appear to be a de minimis, a nonsubstantive error. [Emphasis in original.]

Id. at 516.

We have interpreted Conway to mean that although a date can be required, the failure to date is not to be a per se disqualification. If the Secretary is concerned with fraud, he can require evidence that an application was signed on a qualifying date and that all other qualifications were satisfied as of that date. See Amberex Corp., 78 IBLA 152 (1983). We have applied the reasoning in Conway to cases where the applicant dates his application but the date incorrectly indicates that the application was signed outside the filing period. Thus, in Amberex Corp., supra, the record indicated that the applicant had inadvertently carried over the previous year, in dating its application, using the date of January 12, 1982, instead of January 12, 1983. We concluded where the record indicated an inadvertent misdating of an application and no intention to fraudulently obtain a lease, pursuant to the Conway rationale, this would be treated as a nonsubstantive error. See also Richard W. Renwick (On Reconsideration), 78 IBLA 360 (1984).

Unlike Amberex and Renwick, this case does not involve an inadvertent misdating of the application. Appellant has admitted on appeal that the application used in the May 1983 drawing with respect to parcel CO-286 was not signed within the relevant filing period. In Conway v. Watt, supra at 517, the court concluded that in cases of omission of the date on an application, the Department could, after a drawing and in addition to verifying qualifications as of a certain qualifying date, "require an applicant to produce proof that his or her signature was made" on that date. Thus, the omission of the date or the inclusion of an incorrect date may not ultimately require rejection of the application, if it can be demonstrated that the application was, in fact, signed within the qualifying period. The execution of the application within that period is the critical act. The application must be signed within the filing period for the attestation to have any meaning. As there is no question that the application used in the May drawing had been executed

^{1/} In Conway the applicant submitted 147 drawing entry cards; 146 were properly dated. The one at issue in the case was found to have been executed and submitted at the same time.

on or before November of the preceding year, we find BLM properly rejected appellant's lease application. 2/

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.

Administrative Judge R. W. Mullen

We concur

Wm. Philip Horton Chief Administrative Judge

Bruce R. Harris Administrative Judge

2/ In the case of a missing or improper date BLM should, prior to rejection, call for the applicant to produce, as suggested by the Conway court, proof that the application was executed on a qualifying date and that all other qualifications were satisfied as of that date. Such was not done in this case; however, appellant's statement of reasons clearly shows that the application in question was not executed during the proper qualifying period.

