

Appeal from decision of New Mexico State Office, Bureau of Land Management, denying petition for reinstatement of noncompetitive oil and gas lease NM-52463.

Affirmed.

1. Oil and Gas Leases: Reinstatement

BLM properly denies a petition for reinstatement of a noncompetitive oil and gas lease, which terminated automatically after Jan. 12, 1983, for failure to pay the annual rental on or before the lease anniversary date, under sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. § 188(d), (e) (1982), where the lessee did not submit the required back rental within 60 days after receipt of a notice of termination, computed at the increased rate of \$5 per acre set forth in 30 U.S.C. § 188(e)(2).

APPEARANCES: David Laro, Esq., Flint, Michigan, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Kurt W. Mikat has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated February 15, 1984, denying his petition for reinstatement of noncompetitive oil and gas lease NM-52463.

Effective September 1, 1982, a 10-year noncompetitive oil and gas lease was issued by BLM to appellant for 1,915.20 acres of land situated in Valencia County, New Mexico, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982). By notice dated October 7, 1983, BLM informed appellant that oil and gas lease NM-52463 had terminated effective September 1, 1983, the anniversary date of the lease, for failure to pay the annual rental "in a timely manner." The notice of termination outlined the two avenues by which appellant might seek to reinstate his lease; i.e., by filing a petition for reinstatement either pursuant to section 31(c) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(c) (1982), or section 401 of the Federal Oil and Gas Royalty Management Act of 1983 (FOGRMA), P.L. 97-451, 96 Stat. 2462 (1983) (codified in relevant part at 30 U.S.C. § 188(d) and (e)). The procedure outlined in the notice included a description of the time limitation for filing and the information and submittals required for consideration of a petition for reinstatement.

On October 21, 1983, appellant filed a petition for reinstatement "on the grounds that I did not to the best of my recollection receive notice of rent due." The petition was accompanied by a check for \$1,916 (\$1 per acre), to cover the back rental. In its February 15, 1984 decision, BLM denied appellant's petition for reinstatement because "the lessee has not satisfactorily complied with the requirements for reinstatement as provided by P.L. 97-451 January 12, 1983 (Title 43 CFR 3108.2-1)."

The February 1984 BLM decision denying reinstatement purports to be an adjudication only of appellant's entitlement to reinstatement under 30 U.S.C. § 188(d) and (e) (1982). However, appellant's petition did not specify whether appellant sought reinstatement under 30 U.S.C. § 188(c) or 30 U.S.C. § 188(d) and (e). Accordingly, we will examine appellant's petition as if it sought relief under both statutory provisions.

We conclude that appellant is not entitled to reinstatement under 30 U.S.C. § 188(c), because appellant did not pay or tender the rental due within 20 days after the lease anniversary date, as required by the statute and specified in the October 7, 1983, notice of termination. The record indicates that appellant's rental payment was mailed on October 18, 1983, and received by BLM on October 21, 1983. Clearly, the tender of the rental due was well after 20 days from the lease anniversary date, September 1, 1983. Accordingly, appellant is not entitled to reinstatement under 30 U.S.C. § 188(c) (1982). Harriet C. Shaftel, 79 IBLA 228 (1984).

Section 401 of FOGRMA, supra, provides that a lease, which has terminated for failure to pay rental on or before the lease anniversary date, may be reinstated where the

rental is not paid or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was justifiable or not due to lack of reasonable diligence on the part of the lessee, or, no matter when the rental is paid after termination, it is shown to the satisfaction of the Secretary that such failure was inadvertent[.]

30 U.S.C. § 188(d)(1) (1982). With respect to leases which terminated on or after January 12, 1983, as in the present case, the statute provides that such leases will not be reinstated unless

a petition for reinstatement together with the required back rental and royalty accruing from the date of termination is filed on or before the earlier of --

(i) sixty days after the lessee receives from the Secretary notice of termination, whether by return of check or by any other form of actual notice, or

(ii) fifteen months after termination of the lease.

30 U.S.C. § 188(d)(2)(B). In addition, the statute provides certain conditions precedent to reinstatement under 30 U.S.C. § 188(d). See 30 U.S.C. § 188(e). The record indicates that appellant's petition for reinstatement

was filed in a timely manner in accordance with 30 U.S.C. § 188(d)(2)(B). However, the back rental tendered was not of the appropriate amount and, for this reason, reinstatement under section 401 of FOGRMA, supra, must be denied.

The statute provides, in relevant part, with respect to noncompetitive oil and gas leases, that reinstatement will be made only if the following condition is met: "(2) payment of back rentals and * * * inclusion in a reinstated lease * * * of a requirement that future rentals shall be at a rate not less than \$5 per acre per year." In Information Memorandum No. 83-183, dated April 13, 1983, the Director, BLM, set forth a format for a notice of termination which was to be sent to oil and gas lessees whose leases had terminated for failure to pay the annual rental timely. This format stated that in order to qualify for reinstatement under section 401 of FOGRMA, supra, a lessee must file a petition for reinstatement "together with the rental and royalty due from the date of termination to the date of petition and payable at the rates set out below." The applicable rental rate was \$5 per acre. However, on May 24, 1983, the Director, BLM, issued Instruction Memorandum No. 83-558, which stated at page 4 that: "Rents and royalties owed from the date of termination shall remain at the same rates as were in effect at the time of termination and must be paid at the time that the petition is filed." The format for the notice of termination was revised accordingly to require that rental and royalty due from the date of termination to the date of petition, which accompany the petition for reinstatement, are to be "payable at the rates in effect on the date of termination."

The interpretation of what section 401 of FOGRMA, supra, required in the way of back rental filed with a petition for reinstatement was amended, however, on August 16, 1983, with the issuance of Instruction Memorandum No. 83-558, Change 1, by the Director, BLM. The memorandum stated, at page 1, that "[b]ack rentals and royalties accruing from the date of termination are payable at the higher rates as specified in the law." This interpretation, which returned to that adopted in Information Memorandum No. 83-183, was based on a resolution adopted by the House Committee on Interior and Insular Affairs on July 13, 1983, which declared the intent of Congress in enacting section 401 of FOGRMA, supra, specifically:

That, when the Secretary of the Interior exercises his discretionary authority to reinstate any former leases under Public Law 97-451, the provisions of section 401(e) of Title IV of Public Law 97-451 with regard to the increased rental and royalty terms for a reinstated * * * noncompetitive lease * * * require that payment of back rentals and royalties be equal to the amounts which are established as minimum future rentals and royalties for each such reinstated lease[.] [Emphasis added.]

These minimum future rentals are those set forth in 30 U.S.C. § 188(e)(2) (1982), i.e., \$5 per acre in the case of noncompetitive leases.

The instructions sent to the appellant as a part of the October 7, 1983, notice of termination contained instructions which reflected the directives contained in Instruction Memorandum No. 83-558, Change 1, and the intent of Congress above stated. These instructions stated in pertinent part:

Your lease may be reinstated under these provisions only if: * * *
(2) * * * a petition for reinstatement, together with the rental and
royalty due from the date of termination to the date of the petition and
payable at the rates set out below, is filed in this office within 60 days
after receipt of this Notice * * *.

* * * * *

(a) for reinstated noncompetitive leases, rental shall be at \$5.00 per
acre or fraction thereof per year * * *.

Oil and Gas Lease Termination Notice, dated October 7, 1983, at 2.

Accordingly, at the time appellant's lease terminated by operation of law, and when he
submitted his petition for reinstatement, he was required by section 401 of FOGRMA, supra, to timely
submit the "required back rental," payable at the rate of \$5 per acre. 30 U.S.C. § 188(d)(2)(B) (1982).
The record indicates that appellant tendered the back rental computed at the rate of \$1 per acre rather
than the appropriate and specified rate of \$5 per acre. Appellant has not complied with a condition
precedent to reinstatement under section 401 of FOGRMA, supra, and we conclude that appellant's
petition for reinstatement was properly denied. Harriet C. Shaftel, supra.

We note that the Department recently published proposed rules in the Federal Register which
state, in relevant part, that the "required back rental" which accompanies a petition for reinstatement shall
be "at the increased rates accruing from the date of termination." 43 CFR 3108.2-3(a) (49 FR 4220 (Feb.
3, 1984)). See Jerry Chambers Exploration Co., 80 IBLA 123, 125 (1984).

Therefore, 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:

Franklin D. Arness
Judge Administrative Judge

C. Randall Grant, Jr. Administrative

