

NANCY SPENCER

IBLA 84-202

Decided August 28, 1984

Appeal from the decision of the Eastern States Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application for oil and gas lease ES 32557.

Affirmed as modified.

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

Where the identification number on an automated simultaneous oil and gas lease application form Part B differs from that on Part A, the application is unacceptable.

APPEARANCES: Nancy Spencer, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On November 11, 1983, the Eastern States Office, Bureau of Land Management (BLM), rejected Nancy Spencer's simultaneous oil and gas lease application for parcel ES-100 which was drawn with first priority in the May 1983 drawing and was serialized as ES 32557. The application was rejected because the identification number of Part B on her application differed from that of Part A. Appellant contests the rejection of her application. She states: "The improper Social Security Number was a technical error in filling out the boxes on the form provided, A and B. This can be readily corrected and was done so when requested by Wyoming State Office."

Presently, BLM uses a computerized application system allowing applicants to apply for hundreds of parcels on one application form. Previously, oil and gas lease applicants participating in the simultaneous filing system submitted one application for each parcel for which they wished to apply. Appellant's application bearing the incorrect identification number was accompanied by a filing fee of \$675 because appellant had applied for 9 parcels on one application.

[1] In Shaw Resources, Inc., 79 IBLA 153, 91 I.D. 122 (1984), this Board found that a defect of the sort which appears on the application submitted by appellant causes her application to be found to be unacceptable. See Shaw, supra at 174-76, 91 I.D. at 134-35. Since the decision in Shaw, numerous Board decisions establish that, although the failure to exactly

match the numbers on both parts of the automated application form is not a defect expressly listed in the regulation, the application must nonetheless be found unacceptable since the defect prevents use of the automated system. See 43 CFR 3112.3(a)(3); Newman Partnership, 79 IBLA 281 (1984); Joan Chorney, 79 IBLA 271 (1984). Shaw and its progeny are controlling in this case. Appellant's contention that this error is merely "technical" was rejected by Shaw, which acknowledged the weight of this argument, but found it to be inapplicable in cases of mismatched identification numbers because a type of defect is involved in such cases which obstructs operation of the entire simultaneous application selection system. Cf. Conway v. Watt, 717 F.2d 512 (1983).

Since appellant's application is unacceptable, a fee of \$75 for handling the application form should have been deducted from the total amount of her remittance, and the balance returned to her. The difference between finding that an application is "unacceptable" as distinguished from "rejectable" is crucial in making this determination, for, as established in Shaw, it is only in the case of applications found to be unacceptable that a refund of the filing fee may be made, after deduction of a \$75 payment per application form. See 43 CFR 3112.3(b); Shaw, supra at 176, 91 I.D. at 135.

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 and the case remanded to BLM for refund of appellant's filing fee as directed by this opinion.

Franklin D. Arness
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Will A. Irwin
Administrative Judge

