

Appeal from decision of the Colorado State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease C-34959.

Set aside and remanded.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals -- Regulations: Applicability -- Regulations: Interpretation

Under 30 U.S.C. § 188(c) (1982), a lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justifiable. Where it benefits the affected party to do so, and there are no countervailing public policies or intervening rights which will be adversely affected, an oil and gas lease regulation which is amended while the matter is pending may be applied in its amended form. Under the reinstatement regulations as amended (Aug. 22, 1983), a rental payment postmarked on or before the anniversary date and received within 20 days thereafter may be construed as reasonably diligent.

APPEARANCES: W. J. Collingsworth, Esq., and Mark K. Blongewicz, Esq., Tulsa, Oklahoma, for appellant.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Hugh L. Scott has appealed from a January 17, 1984, decision of the Colorado State Office, Bureau of Land Management (BLM), which denied a petition for reinstatement of his terminated oil and gas lease C-34959.

Appellant's lease issued effective July 1, 1982. The annual rental was due on or before July 1, 1983, the anniversary date of the lease. The BLM office, in Denver, received appellant's rental check on Tuesday, July 5, 1983. The check was dated June 30, 1983, and its envelope postmarked in Tulsa, Oklahoma, on the following day, Friday, July 1, 1983.

The BLM termination notice, dated October 31, 1983, outlined the requirements for reinstatement pursuant to 30 U.S.C. § 188(c) (1982) (class I reinstatement) and 30 U.S.C. § 188(d) (class II reinstatement.)

Appellant argues that the BLM decision was arbitrary and capricious, an abuse of agency discretion, and contrary to applicable law. He insists

that his payment should be considered timely as postmarked on the due date and asserts ambiguity in the regulations. Alternatively, he argues that BLM should have reinstated his lease. He insists that forfeiture would be inequitable. 1/

[1] Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that upon failure of a lessee to pay rental on or before the anniversary date of the lease on which there is no well capable of production of oil or gas in paying quantities, the lease terminates automatically by operation of law. Under section 31(c), 30 U.S.C. § 188(c) (class I reinstatement), a terminated oil and gas lease may be reinstated where the rental is paid within 20 days of the anniversary date and a showing is made by the lessee that the failure to pay on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. Vernon L. Berg, 72 IBLA 211 (1983); Tenneco Oil Co., 71 IBLA 339 (1983); Phillips Petroleum Co., 71 IBLA 105 (1983). In absence of such proof, a petition for reinstatement pursuant to this section must be denied.

Reasonable diligence ordinarily requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2) (1982); Ramoco, Inc. v. Andrus, 649 F.2d 814, 815 (1981). Appellant mailed his payment in Tulsa, Oklahoma, on the date it was due in Denver, Colorado. Mailing an oil and gas lease rental payment on the date it is due does not constitute reasonable diligence. Jones K. Mullinax, 35 IBLA 73, (1978); Constitution Petroleum Co., 25 IBLA 319 (1976). Therefore, on the anniversary date appellant had not met the class I reinstatement standard for reasonable diligence. Leo M. Krenzler, 82 IBLA 204 (1984); James M. Chudnow, 62 IBLA 13 (1982).

As to whether appellant's lack of reasonable diligence was justifiable, this Board has stated that "[u]ntimely payment of annual rental may be justifiable for purposes of [class I] reinstatement if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease." James M. Chudnow, supra at 15. There is no indication of such circumstances outside the lessee's control here. Instead, appellant relied upon an Internal Revenue Service (IRS) mailing deadline, as opposed to receipt deadline found in 30 U.S.C. § 188(b) (1982). The Department of the Interior uses receipt in the proper office to determine timeliness of filings with BLM. 43 CFR 1821.2-2(f). IRS has been governed by a different deadline rule. David R. Smith, 33 IBLA 63, 65 (1977). Therefore, under the regulations in effect on July 1, 1983, appellant could not show either a timely payment to establish the reasonable diligence or justifiable excuse necessary for a class I reinstatement. 2/

1/ In a supplemental statement of reasons, filed with this Board on Aug. 20, 1984, appellant pointed out that on June 15, 1984, BLM received and retained an additional payment for the lease year beginning July 1, 1984. We note that by paying the current rental timely, appellant has preserved his rights on appeal.

2/ On Jan. 12, 1983, Congress added another reinstatement alternative in P.L. 97-451, class II reinstatement. 30 U.S.C.A. § 188(d) and (e) (West Supp.

However, the regulation 43 CFR 3108.2-1 was amended effective August 22, 1983, after the events in this case occurred. 48 FR 33673-74 (July 22, 1983). The critical deadline for payment, the anniversary date of the lease, was not changed. However, the following language was added which supports appellant's position. "A remittance which is postmarked by the U.S. Postal Service * * * on or before the lease anniversary date and is received in the proper BLM office no later than 20 days after such anniversary date shall be considered as timely filed." 43 CFR 3108.2-1(a). We believe that under the terms of this revised regulation a rental payment postmarked on or before the anniversary date and received within 20 days thereof if properly construed to meet the standard of reasonable diligence. William F. Branscome, 81 IBLA 235, 236-37 (1984); Anthony F. Hovey, 79 IBLA 148, 151 (1984) (Grant, A.J., concurring).

Therefore, we turn to the question whether appellant should be permitted to take advantage of this change in the regulations. In the absence of countervailing public policy reasons or intervening rights, this Board may apply an amended version of a regulation to a pending matter where it benefits the party affected to do so. James E. Strong, 45 IBLA 386 (1980); Wilfred Plomis, 34 IBLA 222 (1978). There is no showing of a conflicting interest here. As to public policy, appellant has pointed to Congressional sympathy with lessees whose leases terminate due to inadvertent mistake that causes late payment of annual rental. H.R. Rep. No. 859, 97th Cong., 2d Sess. 21, reprinted in 1982 U.S. Code Cong. & Ad. News 4275. Although appellant's lease terminated on July 1, 1983, BLM did not issue its decision until January 17, 1984, well after the amended regulation took effect; thus, this matter was still pending. See James E. Strong, supra. We see no reason why appellant should not now be regarded as being eligible to have his lease reinstated, subject to any intervening rights of record. Having paid his lease rental, appellant can be judged to have exercised reasonable diligence in paying his lease rental sufficient for a class I reinstatement.

Therefore, 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 Colorado State Office is set aside and the matter is remanded for further action consistent with this opinion.

Will A. Irwin
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

fn. 2 (continued)

1983). This alternative is subject to several conditions, including the payment of increased rental and a \$500 reinstatement fee. Appellant chose not to pursue this alternative; therefore, the requirements for class II reinstatement have not been met.