

HARRIS-HEADRICK

IBLA 84-428

Decided February 6, 1985

Appeal from decision of the New Mexico State Office, Bureau of Land Management, dismissing a protest to the finding of priority of acquired lands oil and gas lease offers NM-A 51809 OK and NM-A 51810 OK over offer NM-A 51811 OK.

Affirmed.

1. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Offers to Lease

In the absence of a proper receptacle for the receipt outside of established business hours of personally delivered filings, it was not improper for a BLM employee, prior to the opening of the BLM office, to receive acquired lands oil and gas lease offers in the hallway of the BLM office on the condition that they would be time and date stamped as of the opening of the office. An individual who voluntarily declined to submit his offer at that time cannot be heard later to claim unfair treatment and protest loss of priority because the offer presented by him was machine time stamped 1 minute after the opening of the office.

APPEARANCES: Gary W. Harris, Stillwater, Oklahoma, for appellant; Dennis R. Eckart, Chief, Branch of Lands and Minerals Operations, New Mexico State Office, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Harris-Headrick has appealed from a March 9, 1984, decision of the New Mexico State Office, Bureau of Land Management (BLM), dismissing its protest to the finding of priority of acquired lands oil and gas lease offers NM-A 51809 OK and NM-A 51810 OK over appellant's conflicting offer NM-A 51811 OK.

BLM stated in its March 9, 1984, decision:

On November 12, 1981, the BLM, New Mexico State Office, issued and posted a public notice concerning the filing of offers to lease. The notice outlined procedures to be followed upon the receipt of applications during a specific filing period. It stated in pertinent part: "Offers received prior to and up to 7:45 a.m. on date of filing must be placed in the proper receptacle (Room 3031), and will be considered filed simultaneously as of 7:45 a.m. Offers walked in after 7:45 a.m. will be clocked in at the time of receipt."

Sometime before December 18, 1981, the cashier's office was moved and a proper receptacle was not installed. In the absence of a "proper receptacle," applications NM-A 51809 OK and NM-A 51810 OK were left on the cashier's counter prior to 7:45 a.m. The BLM cashier then time stamped these applications as simultaneously filed at 7:45 a.m. Application NM-A 51811 OK from Harris-Headrick was received and time stamped at 7:46 a.m. This procedure was in accordance with the November 12, 1981 "Public Notice."

BLM announced that a drawing would be held to determine priority between NM-A 51809 OK and NM-A 51810 OK.

In its statement of reasons appellant makes certain allegations concerning the filing procedure adopted by BLM in this case. Appellant complains that on December 18, 1981, Charles Headrick, a general partner in Harris-Headrick, was first in line in the New Mexico State Office waiting for the office to open so he could file for the parcel in question. Appellant claims that prior to the opening of the office, the clerk came into the hallway and accepted the offers of two other individuals. Appellant claims this procedure by BLM resulted in it improperly losing its priority for the lands involved. BLM filed no response to appellant's statement of reasons.

On October 9, 1984, the Board issued an order requesting an answer from BLM setting forth its recollection of the events in question. The Board also requested a copy of the public notice referenced in the decision.

BLM responded on November 16, 1984, as follows:

The November 12, 1981, Memorandum had no bearing on this case because it was for the November filing period. It was referred to in the decision because it outlines our procedures for processing simultaneously filed applications. This office was, in fact, not aware of the December 18, 1981, vesting date which generated the three applications in question. For this reason, no specific public notice similar to that of November 12, 1981, was prepared.

Employee recollection of the specific day in question, December 18, 1981, is as follows:

Applications NM-A-51809 OK and NM-A-51810 OK were placed on the cashier counter prior to 7:45 a.m. and hand-stamped 7:45 a.m. Application NM-A-51811 OK (Harris-Headrick) was time-stamped 7:46 a.m. This was because the person who delivered the application insisted on the electric time clock being used rather than having his application placed with the others on the counter. The procedure used by the cashier to verify the completeness of the application and remittance took approximately one minute. Therefore, the time clock was 7:46 a.m. rather than 7:45 a.m.

It appears that the appellant is confused about the receipt of other applications during this same three-month period. BLM employees did, in fact, take some applications prior to regular office hours from applicants standing in the hallway. This was because of ongoing construction activity which precluded having a proper receptacle available. However, all applications taken in this manner were hand-stamped 7:45 a.m. and considered simultaneously filed.

In a reply filed December 4, 1984, appellant again argued that it should be awarded priority because it was first in line to file on December 18. Appellant also provided the affidavit of Charles Headrick in which he stated:

That on December 18, 1981, at approximately 6:45 A.M., I appeared at the entrance to the office of the Cashier, Bureau of Land Management, Santa Fe, New Mexico, for the purpose of filing an over-the-counter application to lease minerals belonging to the United States. That application has since been numbered NM-A 58111 [sic] OK.

That between 7:30 A.M. and 7:40 A.M. persons whom I believe to be Eloy Sanchez and Robert Piat arrived. At approximately 7:40 A.M. the door to the office of the clerk was opened and the clerk came into the hallway to ask if we wanted to present our applications for filing at that time and advised that each would be hand stamped as being filed at 7:45 A.M. The other two applications were received at that time.

I chose not to present our application until the office opened at 7:45 A.M. for the reasons that:

1) I felt that to do so would jeopardize the priority of our application by its being presented prior to office hours.

2) I wanted to satisfy myself that the application was properly stamped by machine and that I had a copy of the application reflecting the time of filing.

The public notice referenced by BLM in its decision, which it now states was merely cited to indicate its procedure for handling simultaneously filed offers, states:

The following procedures should be followed on the oil and gas offers received November 13, 1981:

(A) Offers filed during business hours on November 12, 1981, will be premature and not acceptable.

(B) Offers received prior to and up to 7:45 a.m., November 13, 1981, must be placed in the proper receptacle (Room 3031), and will be considered filed simultaneously as of 7:45 a.m.

(C) Offers received on the first mail run will also be considered received at 7:45 a.m. and will be considered simultaneously filed.

(D) Offers walked in after 7:45 a.m. will be clocked in at the time of receipt.

The notice also referred to Instruction Memorandum No. 80-529, dated May 22, 1980. That memorandum outlines filing procedures and states in pertinent part:

c. Filing Receptacle. If the office provides a receptacle for filings which is accessible outside established business hours, the filings will be treated as a scheduled mail delivery. Filings deposited after close of business will be date and time stamped as of the opening of business on the next business day. [Emphasis in original.]

In this case BLM admits there was no public notice such as the November 12, 1981, notice governing the December 18, 1981, filings. It also appears that on December 18, 1981, there was no receptacle available for filings. BLM states that NM-A 51809 OK and NM-A 51810 OK "were placed on the cashier counter prior to 7:45 a.m. and hand-stamped 7:45 a.m." It is unclear whether BLM admits that in this instance those two offers were taken in the hallway and placed on the counter by a BLM employee or whether the individuals themselves placed them on the counter. One of appellant's partners swears that the BLM employee solicited the offers in the hallway. Under the circumstances, we find that the offers were collected in the hallway on December 18, 1981, as recounted by appellant. ^{1/}

[1] For guidance regarding filing procedures, we turn to regulation 43 CFR 3111.1-1(a) (1981) which provides in pertinent part: "For the purpose of this part an offer will be considered filed when it is received in the

^{1/} This finding is based in part on the silence of the other offerors who were served with appellant's statement of reasons and BLM's response to the Board's order.

proper office during business hours." (Emphasis added.) 2/ In addition, 43 CFR 1821.2-2(d) (1981) states:

(d) Any document required or permitted to be filed under the regulations of this chapter, which is received in the proper office, either in the mail or by personal delivery when the office is not open to the public, shall be deemed to be filed as of the day and hour the office next opens to the public. 3/

Pursuant to this regulation, personal delivery of an offer to the BLM office when the office is not open to the public constitutes filing as of the day and hour the office next opens to the public. 4/

It is undisputed that all three offers were available for filing prior to the opening of the office on December 18, 1981. According to Headrick, the clerk asked the three people waiting to file if they wanted to present their offers for filing at that time, and they were advised that each would be hand stamped as being filed at 7:45 a.m. Out of an abundance of caution or in the apparent belief that he would obtain priority by being first in line prior to the opening of the office for business, Headrick declined to present appellant's offer for hand stamping. This resulted in appellant's offer being machine stamped as being filed at 7:46 a.m.

The decisive fact in this case is that appellant was offered the same opportunity to present its offer as the other individuals waiting for the office to open. 5/ Regardless of Headrick's rationale for declining to submit appellant's offer to the BLM employee, it is clear that he voluntarily declined to follow that procedure. By insisting on machine stamping appellant lost the opportunity to have its offer filed simultaneously with the others.

The regulations clearly contemplate personal delivery of offers to BLM offices outside business hours, to be time and date stamped as of the time and

2/ The current regulation governing priority of over-the-counter offers, 43 CFR 3111.1-1(b), provides:

"(b) Priority of an offer received over-the-counter shall be determined as of the time and date the offer is filed in the proper BLM office. Offers to lease which are received in the same mail or over-the-counter at the same time, or during the period established by an opening order or similar notice shall be considered as having been filed simultaneously. Priority of the offers to the extent of the conflicts between them shall be determined by drawing in accordance with § 1821.2-3 of this title."

3/ This regulation remains unchanged.

4/ It appears that the provision in Instruction Memorandum No. 80-529 relating to the filing receptacle was an attempt to address the personal delivery aspect of 43 CFR 1821.2-2(d).

5/ Although appellant alleged unfair procedures in its statement of reasons and indicated that two other individuals had been singled out for special treatment by BLM, the affidavit of Headrick discloses that BLM uniformly applied the collection procedure in this case.

date of the opening of the office on the next business day. The procedure of the BLM employee volunteering to collect the offers in this case prior to business hours and accord them all the same treatment was not unreasonable in the absence of a receptacle for such filings. 6/

We find no basis to support appellant's contention that because Headrick was first in line prior to the opening of the office he should receive priority over all other offerors whose offers were received prior to the official opening of the office. The regulation at 43 CFR 1821.2-2(d) requiring that all documents received prior to opening be considered as simultaneously filed as of the opening of the office is a fair and reasonable way of determining priority among conflicting offerors tendering offers at a time when the office is closed.

Based on the facts in this case we conclude that BLM properly dismissed appellant's protest.

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.

Bruce R. Harris
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Edward W. Stuebing
Administrative Judge

6/ Appellant cites 43 CFR 1821.2-1(b) which provides that "[a]pplications and other documents cannot be received for filing by the authorized officer out of office hours." This regulation does not preclude the procedure in this case. When read with 43 CFR 1821.2-1(d) which allows personal delivery to the proper BLM office, this regulation is apparently designed to shield the authorized officer from individuals who seek out that person outside the office and attempt to make filings. The intent of both regulations is to preclude any person from obtaining priority by filing when the office is closed.

