

Appeal from decision of the New Mexico State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease NM 46013.

Affirmed.

1. Oil and Gas Leases: Assignments or Transfers -- Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Termination

Under 30 U.S.C. § 188(c) (1982), the Secretary is without authority to reinstate an oil and gas lease terminated by operation of law for failure to pay annual rental timely where the lessee fails to submit the full amount of rental due within 20 days of the anniversary date of the lease.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Termination

A petition for reinstatement of a terminated oil and gas lease under sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. § 188(d), (e) (1982), must be filed on or before the earlier of (1) 60 days after the lessee received notice of termination, or (2) 15 months after termination of the lease. Where the lessee receives a notice of termination and fails to file a petition within 60 days, reinstatement is properly denied.

3. Oil and Gas Leases: Assignments and Transfers

Where the assignment of an oil and gas lease is pending before the Bureau of Land Management, the assignor is responsible for the performance of all obligations under the lease until the assignment has been approved. The failure of the Bureau of Land Management to approve an assignment by the rental due date does not excuse or justify the nonpayment or late payment of the rental.

APPEARANCES: Jerry D. Powers, Denver, Colorado, pro se.

## OPINION BY ADMINISTRATIVE JUDGE HARRIS

Jerry D. Powers appeals from a decision of the New Mexico State Office Bureau of Land Management (BLM), dated April 24, 1984, rejecting his petition for reinstatement of oil and gas lease NM 46013.

The original lease was issued to Peter Van Der Jagt, effective on December 1, 1981. On July 6, 1983, Van Der Jagt assigned the subject lease to Powers, and BLM approved the assignment effective September 1, 1983. On August 8, 1983, Powers assigned the lease to John Bird. This lease assignment was filed with BLM on October 17, 1983. No action was taken on the assignment 1/ and on December 1, 1983, the lease terminated.

On January 6, 1984, BLM forwarded Powers an oil and gas lease termination notice indicating that the subject lease was terminated on the anniversary date of the lease, December 1, 1983, for failure to pay the rental in a timely manner. BLM also informed Powers of his right to petition for reinstatement of the lease pursuant to 30 U.S.C. § 188(c) (1982) (class I reinstatement), and pursuant to 30 U.S.C. § 188(d) and (e) (1982) (class II reinstatement). BLM's lease termination notice set forth the conditions for reinstatement under both class I and class II. 2/

1/ Once an oil and gas lease has terminated, an assignment may not be approved unless and until the lease is reinstated. E.g., Harry C. Peterson, 75 IBLA 195, 197 (1983); Jack J. Grynberg, 53 IBLA 165, 167 (1981).

2/ The lease termination notice outlined the reinstatement conditions as follows:

"I. Class I (30 U.S.C. 188(c); 43 CFR 3108.2-1(c))

"Your lease may be reinstated under these provisions only if: (1) the rental due is paid or tendered to this office within 20 days after the anniversary date of the lease, and it is shown to the satisfaction of the authorized officer that failure to pay was either justifiable or not due to a lack of reasonable diligence, (2) that a petition for reinstatement, together with the required rental, is filed in this office within 15 days after receipt of this Notice, and (3) that a new oil and gas lease has not been issued for any of the lands included in the terminated lease. If these conditions are met, your lease will be reinstated with the original lease terms and conditions, effective on the date of termination. If one or more of the above conditions are not met, your lease may be eligible for a Class II reinstatement. However, to qualify for a Class II reinstatement, the following conditions must be met.

"II. Class II (30 U.S.C. 188(d) and (e); P.L. 97-451 § 401(d))

"Your leases may be reinstated under these provisions only if: (1)(a) the rental is paid within 20 days after the anniversary date of the leases, and it is shown to the satisfaction of the authorized officer that failure to pay on the anniversary date was due to inadvertence, or, (b) if the rental is not paid within 20 days after the anniversary date, it is shown to the satisfaction of the authorized officer that failure to pay was either justifiable or not due to a lack of reasonable diligence or due to inadvertence, (2) that 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, is filed in this office within 60 days after receipt of this Notice, and (3) that a new oil and gas lease has not been issued for any of the lands included in the terminated leases.

"If these conditions are met, you will have to meet certain other requirements for reinstatement as follows:

On April 20, 1984, Powers filed with BLM a protest to the termination of the lease, a petition for reinstatement, and a request to approve the assignment to Bird. Powers did not style his petition as a class I or class II request.

On April 24, 1984, BLM issued a decision dismissing appellant's protest and denying his petition for reinstatement. BLM rejected the petition for reinstatement because it was not timely filed. BLM stated that "[i]n order for the petition to be considered it had to be filed prior to March 9, 1984, which was the 60-day period after receipt of termination of the notice [sic]. Therefore, the protest filed April 20, 1984, is hereby dismissed and the petition for reinstatement is denied." BLM's rationale for rejection was directed to a failure to comply with a class II reinstatement condition.

As grounds for appeal, appellant asserts that his assignment should have been approved in a timely manner. Appellant claims that his misfortune was due to the fact that the assignment was not approved before the rental due date, and that he was not advised that action would not be taken on his assignment.

[1] Section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that when the lessee fails to pay rentals on or before the anniversary date of the lease, and where no oil or gas in paying quantities is being produced on the leased premises, the lease shall automatically terminate by operation of law. If the lessee has paid the full rental within 20 days after the lease anniversary date, and the lessee shows that the failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence, the Department may, under certain circumstances, reinstate the lease, pursuant to 30 U.S.C. § 188(c) (1982) and 43 CFR 3108.2-1(c) (class I). <sup>3/</sup> E.g., Harry L. Bevers, 84 IBLA 158, 160-61

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fn. 2 (continued)

"1. You will be required to pay a reinstatement processing fee of \$500 for each lease or as provided in regulations in effect at the time the petition is submitted, as well as the cost of publishing a Notice of Proposed Reinstatement for each lease in the Federal Register, and,

"2. You must agree to new lease rental and royalty terms:

"(a) for reinstated noncompetitive leases, rental shall be \$5.00 per acre or fraction thereof per year, and royalty shall be payable at a rate of 16 2/3 percent;

"(b) for reinstated competitive leases, rental shall be \$10.00 per acre or fraction thereof per year, and royalty shall be payable at a rate of not less than 16 2/3 percent, computed on a sliding scale of 4 percentage points greater than the competitive royalty schedule attached to the lease. "If all these requirements are met, your leases may be reinstated with the amended terms and conditions, effective on the date of termination." (Emphasis in original.)

<sup>3/</sup> The oil and gas regulations were amended July 30, 1984 (effective Aug. 29, 1984), to provide specific regulations for reinstatement under various classes. 49 FR 30446-50. Class I regulations are found at 43 CFR 3108.2-2(a). 49 FR 30448-49. There is no substantive change from the previous requirements in 43 CFR 3108.2-1(c). 48 FR 33673 (July 22, 1983). New regulations govern class II reinstatements. 43 CFR 3108.2-3 (49 FR 30449).

(1984); Leo M. Krenzler, 82 IBLA 205, 207 (1984); Kay Fink, 81 IBLA 381, 382 (1984); Arthur M. Solender, 79 IBLA 70, 72 (1984).

Even assuming appellant could show the failure to pay was justifiable or not due to a lack of reasonable diligence, class I reinstatement is unavailable to him because of his failure to pay the rental within 20 days after the anniversary date. Samson Resources Co., 71 IBLA 224, 229 (1983).

[2] Appellant also failed to satisfy the requirements for a class II reinstatement pursuant to section 401 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. § 188(d), (e) (1982). 30 U.S.C. § 188(d)(2)(B) provides that the petition for reinstatement, together with the required back rental, must be filed on or before "the earlier of -- (i) sixty days after the lessee received from the Secretary notice of termination \* \* \*, or (ii) fifteen months after termination of the lease." Since appellant failed to file a petition for reinstatement together with the required back rental within 60 days of the date of receipt of the notice, appellant does not qualify for class II reinstatement. See, e.g., John F. Clifton, 82 IBLA 126, 127 (1984); Harriet C. Shaftel, 79 IBLA 228, 231 (1984).

[3] Appellant asserts that he should not be penalized for BLM's delay in processing the assignment. Appellant's argument is misplaced. Until approval of the lease assignment, "the assignor or sublessor and his surety shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed." 30 U.S.C. § 187a (1982). See NP Energy Corp., 72 IBLA 34, 37 (1984). The assignor remains record title holder until the assignment is approved. E.g., Oasis Oil Co. v. Bell Oil & Gas Co., 106 F. Supp. 954, 957 (W.D. Okla. 1952); Reichhold Energy Corp., 40 IBLA 134, 137 (1979), *aff'd*, Reichhold Energy Corp. v. Andrus, No. 79-1274 (D.D.C. Apr. 30, 1980). In NP Energy Corp., *supra* at 37, we noted:

Where appellant [assignor] remained responsible for making the rental payment, it cannot attribute its failure to pay timely to BLM. The proximate cause of the late payment would not have been BLM's failure to notify, but, rather, appellant's lack of diligence in handling its obligations. This cannot be considered a justifiable excuse entitling appellant to reinstatement. Alminex U.S.A., Inc., 64 IBLA 274 (1982). [Footnotes omitted.]

Herein, appellant remained responsible for timely making the rental payment because the assignment was never approved. Thus, it was appellant's own mishandling of his business affairs (lack of timely rental payment) which led to lease termination. BLM's failure to approve the assignment by the rental due date does not excuse or justify the nonpayment or late payment of rental.

The case of Harry C. Peterson, *supra*, is instructive. In Peterson, the appellant was an assignee of an oil and gas lease that was terminated for failure to submit a timely rental payment. See 30 U.S.C. § 188(c) (1982). On appeal, Peterson argued that his late payment was due to BLM's failure to notify him personally of the due date. Peterson attributed this lack of notice to "BLM's unexplained delay" in approving the assignment of the lease. This Board rejected Peterson's argument, stating:

Appellant's accusation that BLM unreasonably delayed in approving the assignment fails to consider the workload of applications, assignments, and other paperwork with which BLM may be burdened. We recognize that the filing of a proposed assignment in conformity with the applicable law and regulations ordinarily requires approval by the Department. 30 U.S.C. § 187a (1976); Petrol Resources Corp., 65 IBLA 104 (1982). However, appellant could not predict when approval would be granted. NP Energy Corp., supra at 37 n.2. Thus, he could not reasonably assume, as he contends, that the assignment would be approved within a month, or even by the lease's anniversary, or rental due, date. See Reichhold Energy Corp., 40 IBLA 134 (1979), aff'd, Reichhold Energy Corp. v. Andrus, Civ. No. 79-1274 (D.D.C. Apr. 30, 1980). [Emphasis in original.]

75 IBLA at 196-97. The Board affirmed the denial of Peterson's petition for reinstatement, finding that, as an unapproved assignee, Peterson could not seek reinstatement because under 30 U.S.C. § 188(c) (1982) the burden is on the lessee to establish entitlement to reinstatement. The Board further stated that "[a] lessee's failure to protect an unapproved assignee's interest cannot be a justifiable excuse for reinstatement." Id. at 197-98.

In this case, appellant's sole justification for the lack of timely rental payment was BLM's delay in processing the assignment. Even if this were a valid basis for reinstatement, which we hold it is not, appellant would not be entitled to reinstatement because he did not meet the time deadlines for either class I or class II reinstatement. Thus, BLM properly denied appellant's petition for reinstatement.

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:

Wm. Philip Horton  
Chief Administrative Judge

Will A. Irwin  
Administrative Judge

