

RUTH C. BEZIRIUM

IBLA 83-713

Decided April 3, 1985

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application W-85111.

Reversed.

1. Oil and Gas Leases: Applications: Drawings- Oil and Gas Leases: First-Qualified Applicant

Failure of an applicant to date a simultaneous oil and gas lease application in accordance with 43 CFR 3112.2-1(c) (1982) does not require rejection of the application, where it is shown that the application was in fact signed during the filing period.

APPEARANCES: Ruth D. Bezirium, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Ruth D. Bezirium has appealed from a decision dated May 24, 1983, by the Wyoming State Office, Bureau of Land Management (BLM), rejecting her simultaneous oil and gas lease application W-85111.

Appellant's lease application was drawn with first priority for parcel WY-196 in April 1983. In its May 1983 decision, BLM rejected appellant's application because it was undated and, therefore, did not reflect that it was signed within the March 1983 filing period in accordance with 43 CFR 3112.2-1(c) (1982).

On appeal appellant points out that her check for the filing fee that accompanied her application was dated within the filing period and was accepted and cashed by BLM. Appellant also cites Conway v. Watt, 717 F.2d 512 (10th Cir. 1983), where the court concluded that although a date could be required on an application, the failure to date could not be a per se disqualification.

[1] The applicable regulation, 43 CFR 3112.2-1(c) (1982), provides, in relevant part, with respect to simultaneous oil and gas lease applications: "The application shall be dated at the time of signing. The date shall reflect that the application was signed within the filing period."

The Board recently reviewed the above regulatory requirement in light of the Conway decision in Satellite 8305136, 85 IBLA 190 (1985). The discussion therein is fully dispositive of this case and is therefore quoted at length:

There is no question that, at one time, the Department and the courts rigorously enforced the requirement that the application or offer to lease submitted in the simultaneous filing program be dated. Thus, in Sorenson v. Andrus, 456 F. Supp. 499 (1978), the District Court for Wyoming affirmed rejection of an offer to lease the day of the month had been omitted, noting that the Department "was bound" to reject such offers. *Id.* at 501. The rigid enforcement of the dating requirement, however, came to an abrupt end upon the issuance of the Tenth Circuit Court of Appeals' decision in Conway v. Watt, 717 F.2d 512 (1983).

The Conway case involved the rejection of an application for the complete omission of a date. In Conway, the applicant had filed 147 drawing entry cards (DEC's) during the simultaneous filing period. Of these, 146 were properly dated. Through inadvertence, however, the applicant neglected to date one card which was ultimately drawn with first priority for a parcel. BLM rejected this application and, in a decision styled Joe Conway, 59 IBLA 314 (1981), this Board affirmed the rejection.

In reversing the Board's decision (and that of the district court, as well), the court noted that it was called upon to consider only one issue "namely, whether the absence of a date renders this DEC per se defective." 717 F.2d at 513. After noting that this was the only DEC out of 147 filed by Conway which had not been dated, and that it was not contended that the card had been signed outside of the filing period, the court concluded that "Conway's failure to date his DEC would indeed appear to be de minimis, a non-substantive error." *Id.* at 516.

It is important, however, to recognize that the Conway court did not hold that the Secretary could not establish per se rules. On the contrary, the court clearly held that the requirement that the DEC or application form be signed within the filing period was properly enforced against all applicants as a substantive rule. Thus, the court noted:

In light of the foregoing, we hold that although the Secretary can require a signature date, he cannot make its absence a per se disqualification. When a date inadvertently is omitted and if the Secretary is concerned that the omission is fraudulent, he may require an applicant to produce proof that his or her signature was made on a qualifying date and that all other qualifications were satisfied as of that date. Such subsequent verification of qualifying

status provides an adequate basis for the Secretary to proceed against an applicant on the basis of fraud. [Emphasis supplied.]

Id. at 517. Thus, the Conway court explicitly held that the failure to sign within the filing period was a fatal defect, while the failure to supply a date that would show this fact was not necessarily a disqualifying omission.

Since the Conway decision, this Board has been careful to distinguish between the inadvertent omission or misdating of the application form and the inclusion of a correct date which establishes that the form was not signed within the filing period as required by 43 CFR 3112.2-1(c). Thus, in Amberex Corp., 78 IBLA 152 (1983), this Board reversed the rejection of an application which was signed within the filing period, but which had inadvertently been misdated. On the other hand, in Thomas N. Gwyn, 82 IBLA 11 (1984), this Board affirmed rejection of an application, where the appellant admitted it had not been signed within the filing period.

The instant case, however, clearly falls within the category of an inadvertent omission of the date, as appellant avers its agent completed 60 applications forms on the same day, but neglected to date only the application form involved herein. Therefore, consistent with both Conway and Amberex Corporation, we must reverse the rejection of these applications for failure to date the application form. We wish to emphasize, however, that our action should in no way be interpreted as forestalling further adjudication by the State Office on any other aspect of these applications. [Footnote omitted.]

85 IBLA 190-92.

Consistent with the foregoing analysis, it is obvious that Ruth Bezirium's application should not have been rejected. It is not disputed that her application was signed and submitted within the filing period and that her failure to date her application was inadvertent.

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 reversed and the case remanded for further adjudication by the State Office as appropriate.

Wm. Philip Horton  
Chief Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge.

Gail M. Frazier  
Administrative Judge

