

LUCEAL ROBERT

IBLA 85-145

Decided January 23, 1986

Appeal from decision of the Alaska State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease AA-048604-C.

Affirmed.

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

Under 30 U.S.C. § 188(c) (1982), BLM lacks authority to reinstate a noncompetitive oil and gas lease terminated automatically for nonpayment of annual rental where the rental payment was not tendered at the proper office within 20 days after the anniversary date.

APPEARANCES: Luceal Robert, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Luceal Robert appeals from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated November 15, 1984, denying her petition for reinstatement of oil and gas lease AA-048604-C. The original lease (AA-048604) covering 8,320 acres was issued to Alaska Federal Petroleum Corporation (Alaska Federal) effective July 1, 1983. On July 5, 1983, Alaska Federal assigned 160 acres of the lease to appellant, and BLM approved the partial assignment effective September 1, 1983.

On September 4, 1984, BLM sent appellant an oil and gas lease termination notice stating that AA-048604-C terminated on the anniversary date of the lease, July 1, 1984, for failure to pay the rental timely. BLM also informed appellant of her 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) (1982) (class II reinstatement). BLM's lease termination notice set forth the conditions for reinstatement under both class I and class II. 1/

1/ The notice recites:

"Your Federal oil and gas lease serial number AA-48604-C terminated for failure to pay the annual rental on or by July 1, 1984, the anniversary date

On October 30, 1984, appellant filed a class I petition for reinstatement of oil and gas lease AA-048604-C, contending that payment of the annual rental was not made because she had not received notice the lease had been transferred to her. In addition, appellant submitted the rental payment. In its November 1984 decision denying reinstatement, BLM stated first that appellant's approved assignment was mailed to her address of record on February 21, 1984. Further, citing Louis Samuel, 8 IBLA 268 (1972), BLM,

of the lease. 43 CFR 3108.2-1(a). You have the right to petition for reinstatement of the lease under either Class I or Class II reinstatements. The conditions to be met for each are outlined below:

"CLASS I (30 U.S.C. 188(c); PL 91-245; 43 CFR 3108.2-1(c))

To be considered for Class I reinstatement, the following conditions must be met:

1. The following are received in this office within 60 days after receipt of this notice:

(a) petition for reinstatement;

(b) nonrefundable \$ 25 filing fee;

(c) required rental including any back rental that has accrued from the termination date of the lease, or a showing that rental was paid or tendered within 20 days of the anniversary date of the lease; and

(d) a showing to the satisfaction of the authorized officer that failure to pay was either justifiable or not due to lack of reasonable diligence. The "reasonable diligence" requirement is primarily an objective test and is not dependent on the personal circumstances or situation of the lessee, but on what action a reasonably diligent person would take. Louis Samuel, et al., 8 IBLA 268 (1972).

2. No new oil and gas lease has been issued for any of the lands in the terminated lease.

"CLASS II 30 U.S.C. 188(d) and (e); PL 97-451, Sec. 401(d)

To be considered for Class II reinstatement, the following conditions must be met:

1. The following are filed in this office within 60 days from receipt of this notice:

(a) petition for reinstatement;

(b) reinstatement fee of \$ 500 per lease;

(c) Federal Register publication cost of \$ 136 (a Notice of Proposed Reinstatement must be published in the Federal Register at least 30 days prior to reinstatement); and

(d) payment of all required rental, including any back rental, and/or royalty which has accrued from the date of termination.

2. A showing to the satisfaction of the authorized officer that failure to pay was inadvertent.

3. An agreement to the following new lease terms:

(a) an increased rental rate of \$ 5 per acre or fraction thereof per year; and

(b) an increased royalty rate of not less than 16 2/3 percent.

4. No new oil and gas lease has been issued for any of the lands in the terminated lease"

(Termination Notice dated Sept. 4, 1984, at 1, 2).

found that an applicant for a class I reinstatement must show the failure to timely pay the rental was either justifiable or not due to a lack of reasonable diligence. BLM determined appellant's petition for reinstatement did not show reasonable diligence in mailing the payment or a justifiable reason for delay in payment. BLM also found the rental payment received on October 30, 1984, was not paid or tendered within 20 days of the anniversary date of the lease, which is the first requirement of a class I reinstatement. As a result thereof, BLM denied the petition for a class I reinstatement.

In her statement of reasons for appeal, appellant seeks reinstatement of her oil and gas lease, reiterating many of the points raised in her original request for class I reinstatement. Appellant asserts she had received no notification of her ownership of an oil and gas lease until BLM's September 5, 1984, "Notice of Oil and Gas Lease Termination." Appellant states it was her understanding she was to receive her lease papers through Alaska Federal, which she assumed was a branch of BLM. She further states she had received five pieces of correspondence since the notice of lease termination, none of which mentions the anniversary date of her lease.

[1] Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that upon the failure of a lessee to pay rental on or before the anniversary date of a lease on which there is no well capable of production of oil or gas in paying quantities, the lease terminate automatically by operation of law. See 43 CFR 3108.2-1(a). Since appellant's rental payment was not received on or before the anniversary date, oil and gas lease AA-048604-C terminated automatically.

Under 30 U.S.C. § 188(c) (1982), a terminated oil and gas lease may be reinstated where the rental is paid within 20 days of termination upon a showing by the lessee that the failure to pay on or before the lease anniversary date was either justifiable or not due to a lack of reasonable diligence. Hugh Carter Crutchfield Trust, 87 IBLA 27 (1985); Harriet C. Shaftel, 79 IBLA 228, 230 (1984); Vernon I. Berg, 72 IBLA 211 (1983). Appellant clearly did not pay or tender her overdue annual rental within 20 days of the lease anniversary date, i.e., July 1, 1984. Appellant admittedly paid only in response to the termination notice, dated September 4, 1984, which payment was received on October 30, 1984. For this reason alone, appellant was not entitled to a class I reinstatement. Maynard J. Bonesteel, 82 IBLA 237 (1984).

Furthermore, mailing the rental payment after the due date does not constitute reasonable diligence. 2/ O. L. Foster, 72 IBLA 367 (1983).

2/ The Departmental regulations governing reinstatement provide that where a rental payment is mailed "on or before the lease anniversary date and is received in the proper BLM office \* \* \* no later than 20 days after such an anniversary date [it] shall be considered as timely filed." 43 CFR 3108.2-1(a). In effect, when a rental payment is mailed prior to, but received within 20 days of the due date, a late payment is deemed not due to a lack of reasonable diligence; and, thus, the lease will be reinstated under 30 U.S.C. § 188(c) (1982). Hugh L. Scott, 83 IBLA 184 (1984). In this case, however, appellant's rental payment was mailed after the anniversary date. Thus, appellant cannot take advantage of 43 CFR 3108.2-1(a).

However, failure to pay on time may be considered justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his actions in paying the rental fee. Joanne F. Bechtel, 76 IBLA 1 (1983), and cases cited therein. Negligence, forgetfulness, and inadvertence do not justify failure to pay rental timely, since they are events within the lessee's control. John E. Conner, 72 IBLA 83 (1983).

Appellant argues her failure to make rental payment in a timely manner was due to BLM's failure to notify her the payment was due. However, appellant fails to recognize it is the lessee's responsibility to know when rentals are due and to effect required payment with or without benefit of courtesy notices from BLM. Here, appellant had actual notice the assignment did not change the anniversary date of her lease: a document executed by appellant on July 5, 1983, Instruction No. 4 on lease assignment form 3106-5, states that approval of assignment of a portion of the leased lands creates separate leases but does not change the terms and conditions of the assigned portions of the leases or the lease anniversary date for purposes of payment of annual rental. Her later reliance upon receiving a billing notice before the due date can, therefore, neither prevent the lease from terminating by operation of law nor serve to justify a failure to pay the lease rental in a timely manner. Richard C. Hubbard, 68 IBLA 170 (1982).

BLM therefore properly denied appellant's petition to reinstate the lease under class I because appellant failed to tender payment of the annual rental within 20 days of the lease anniversary date as required by statute. 30 U.S.C. § 188(c) (1982).

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.

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Franklin D. Arness  
Administrative Judge

We concur:

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C. Randall Grant, Jr.  
Administrative Judge

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Wm. Philip Horton  
Chief Administrative Judge

