

JACK WILLIAMS

IBLA 85-148

Decided April 21, 1986

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application. AA-54456.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Applications: Filing

A decision rejecting a simultaneous oil and gas lease drawing application bearing the holographic signature of the applicant on the basis that it has been executed in pencil rather than pen will be reversed on the ground that it is a nonsubstantive error.

APPEARANCES: Jack Williams, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Jack Williams has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated November 6, 1984, rejecting his simultaneous oil and gas lease application, AA-54456, which was selected with first priority for parcel AK-108 in the October 1984 simultaneous oil and gas lease drawing.

BLM rejected appellant's lease application because appellant signed the application form (Form 3112-6a (Apr. 1984)) in pencil, rather than in ink, as required by the instructions on the form and the regulation at 43 CFR 3102.4. In his statement of reasons for appeal, appellant questions why he was allowed to participate in the drawing if his signature was in pencil, and inquires about his \$ 75 filing fee.

[1] The applicable regulation, 43 CFR 3112.2-1(c), provides that a simultaneous oil and gas lease application "shall be signed * * * in accordance with § 3102.4." The latter regulation provides that an application "shall be holographically (manually) signed in ink." The requirement to sign an application in ink is also set forth in the instructions on the application form. The record shows that appellant's lease application was signed in pencil.

An understanding of the background of the signature requirements for Federal oil and gas lease applications aids in resolution of this appeal. The applicable regulation with respect to the preparation of a simultaneous oil and gas lease application (formerly a drawing entry card), 43 CFR 3112.2-1(a) (1971) at one time provided only that an application must be "signed and fully executed." In Mary I. Arata, 4 IBLA 201, 78 I.D. 397 (1971), and subsequent cases, the Board held the term "signed" in 43 CFR 3112.2-1(a) (1971) encompassed the use of a rubber stamp to affix a signature to a drawing entry card provided it was the applicant's intention that the stamp be his signature. See Elizabeth McClellan, 45 IBLA 342 (1980). In Mary I. Arata, supra at 204, 78 I.D. at 398, the Board acknowledged that

"perhaps it would be better policy to require that the signature on the drawing [entry] card be 'handwritten in ink' by the [applicant]," but refused to read such a requirement into the regulation as written. Subsequently, the Board recognized that such a signature may be applied to the application not only by the applicant himself, but also by the agent of the applicant. See D. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978).

Effective June 16, 1980, the Department amended 43 CFR 3112.2-1 to specifically require that a lease application be "holographically [1] (manually) signed in ink by the applicant." 43 CFR 3112.2-1(b) (45 FR 35164 (May 23, 1980)). In the preamble to the amended regulations, the Department stated it was expressly overturning the rule established in Mary I. Arata, supra, which permitted the use of mechanically affixed signatures. 45 FR 35157 (May 23, 1980). The Department explained the reason for requiring the personal handwritten signature of applicant:

Personal signatures help to eliminate fraud against the United States and those who participate in the leasing system through agents. In may [sic] cases those who participate through agents have limited exposure to materials issued by the Department of the Interior concerning the leasing program. In view of these factors, and in order to impress on the applicant the seriousness of the leasing procedures and the statements the applicant is required to certify, it is appropriate to require a holographic signature.

45 FR 35157 (May 23, 1980). The requirement that an application be "holographically (manually) signed in ink" is currently embodied in 43 CFR 3102.4.

1/ Holograph is defined as "a document wholly in the handwriting of its author." Webster's New Collegiate Dictionary 541 (1979).

Hence, the avowed purpose of the requirement that an application be "holographically (manually) signed in ink" is to involve the applicant more directly in the application process and, thus, reduce the opportunity for fraud against both the United States and other participants in the leasing system.

The Board has held on numerous occasions that strict compliance with the requirements of 43 CFR Subpart 3112 is required to protect the rights of other qualified applicants. See, e.g., Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). Thus, in Betty J. Thomas, 56 IBLA 323 (1981), and Fred E. Forster III, 65 IBLA 38 (1982), the Board affirmed rejection of applications with a typewritten signature, as distinguished from a holographic signature, in violation of 43 CFR 3112.2-1(b) (1980). However, we are not unmindful of the distinction between substantive and technical defects which the court sought to recognize in Conway v. Watt, 717 F.2d 512 (10th Cir. 1983).

In Conway v. Watt, supra at 516, the court concluded that the failure to date a lease application, as required by 43 CFR 3112.2-1(c) (1980), was "de minimis, a non-substantive error," and that it could not form the basis for a per se disqualification of the applicant where the record established the application was in fact signed within the time limitation established by regulation. The court, in essence, concluded that the absence of a date on the lease application does not necessarily establish the applicant is not qualified to receive a lease or has committed any fraud which threatens

the integrity of the simultaneous leasing system, and if the Department is concerned that a fraud has been committed or that the applicant was not qualified as of a particular qualifying date, it may readily and effectively pursue those questions after a drawing has taken place.

We have applied the Conway rationale in a number of cases. In Richard W. Renwick (On Reconsideration), 78 IBLA 360 (1984), we held the inadvertent misdating of a lease application as prior to the filing period, in violation of 43 CFR 3112.2-1(c) (1982), was nevertheless a nonsubstantive error where the application was in fact signed within the filing period and there was no intimation of fraud. See also Satellite 8305136, 85 IBLA 190 (1985). In Charles Fox and George H. Keith, Partnership, 77 IBLA 199 (1983), we held that even though Part B of the lease application, which serves to identify the parcels selected, was signed by two individuals, as members of the partnership/applicant, and the machine readable portion of Part A of the application indicated the applicant was a single individual, in violation of 43 CFR 3112.2-1(g) (1982) which required that lease applications be "properly completed," this was a nonsubstantive error where the identity of the applicant could be discerned by inspecting the non-machine readable portion of Part A of the application. See also Winkler v. Andrus, 594 F.2d 775 (10th Cir. 1979). In Satellite Energy Corp., 77 IBLA 167, 90 I.D. 487 (1983), we held the failure to fill in the appropriate blocks on Part B of the lease application with the applicant's social security number, in violation of 43 CFR 3112.2-1(a) (1982), was a nonsubstantive error where the machine readable portion of the application disclosed the number.

We do not mean to suggest the Board will apply the Conway rationale across the board to all defects in simultaneous oil and gas lease applications. Indeed, as the court observed in Brick v. Andrus, 628 F.2d 213, 216 (D.C. Cir. 1980), "the Secretary can properly adopt per se rules if he deems them useful in the administration of the [simultaneous leasing] program -- even rules the application of which may at times yield results that appear unnecessarily harsh." In KVK Partnership v. Hodel, 759 F.2d 814 (10th Cir. 1985), the court explained its Conway decision as follows: "[W]e did not hold that the agency may never adopt per se requirements. Read in light of its facts, Conway holds only that a BLM regulation may not be per se grounds for disqualification if it does not further a statutory purpose." Id. at 816. The per se disqualification of a lease applicant is appropriate where the failure to complete an application in accordance with the applicable regulations and instructions on the application form adversely affects the ability of the Department to establish the applicant's qualifications or to protect the integrity of the simultaneous leasing system. See Irvin Wall, 69 IBLA 371, 375 (1983) (Burski, Administrative Judge, concurring). Thus, in Satellite 8309220, 87 IBLA 93 (1985), we held, in the face of a Conway-based challenge, that the failure to sign a lease application properly results in the per se disqualification of the applicant, because the signature constitutes a certification of the truthfulness of the statements made on the application. These statements concern the applicant's qualifications to receive a lease and compliance with applicable regulations which protect the integrity of the simultaneous leasing system. In Thomas N. Gwyn, 82 IBLA 11 (1984), we similarly held, in the face of a Conway-based challenge, that an admission by an applicant that his application was not signed within the

filing period, as required by 43 CFR 3112.2-1(c) (1982), properly results in the disqualification of the applicant. We distinguished those cases involving an inadvertent misdating of an application.

In the present case, appellant did not omit any required information from his application, including his signature. Rather, appellant failed to comply with 43 CFR 3102.4 by not completing his application in the proper manner. The signature was nevertheless valid. As the court noted in Joseph Denunzio Fruit Co. v. Crane, 79 F. Supp. 117, 128 n.16 (S.D. Cal. 1948), vacated on other grounds, 89 F. Supp. 962 (S.D. Cal. 1950), rev'd, 188 F.2d 569 (9th Cir. 1951), cert. denied, 342 U.S. 820 (1951), a signature includes the name of an individual impressed on a document by any known means with the intention of executing that document. See also Roberts v. Johnson, 212 F.2d 672 (10th Cir. 1954). Thus, it is immaterial to the validity of appellant's signature that it is in pencil, rather than in ink.

It appears that the holographic signature of applicant in this case has fulfilled the regulatory objective of ensuring the personal participation of applicant in the filing process in order to reduce the opportunity for fraud, notwithstanding the fact the signature was executed in pencil rather than ink. 2/ There is no intimation that any information relevant to establishing appellant's qualifications to hold an oil and gas lease has been omitted or

2/ It should be noted that other parts of the automated simultaneous oil and gas lease application must be completed in pencil in order to permit machine processing and avoid rejection of the application as unacceptable. See Shaw Resources, Inc., 79 IBLA 153, 91 I.D. 122 (1984).

that compliance with any requirement necessary to police the integrity of the noncompetitive oil and gas leasing system has been neglected.

In conclusion, we can discern no valid statutory purpose which would be served by rejecting appellant's application in the present circumstances and believe this case requires the invocation of the rule announced in Conway that nonsubstantive errors are not properly treated as the basis for a per se disqualification of a lease applicant. ^{3/} See KVK Partnership v. Hodel, *supra*.

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 is remanded to BLM for further consideration.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

^{3/} This case is limited to its facts, *i.e.*, a holographic signature made in pencil on the automated simultaneous leasing application, and we express no opinion whether such a signature on a lease offer in violation of 43 CFR 3102.4 would be considered a nonsubstantive error.

