

EDWARD F. SCHOLLS

IBLA 85-122

Decided July 30, 1986

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting automated simultaneous oil and gas lease application. ES-32559 (Ala.).

Reversed and Remanded.

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

Where a simultaneous oil and gas lease application has been included in a drawing and been accorded a priority, subsequently discovered mismatched Parts A and B identification numbers may not be used as a basis for finding the application to be unacceptable.

APPEARANCES: Edward F. Scholls, pro se; Barry E. Crowell, Esq., Office of the Solicitor, Division of Energy and Resources, Alexandria, Virginia, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Edward F. Scholls has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated October 10, 1984, finding unacceptable simultaneous oil and gas lease application, ES-32559. Appellant's application was drawn with first priority for parcel ES-102 in the May 1983 simultaneous oil and gas lease drawing. In its October 1984 decision BLM stated: "On June 27, 1983, this office was informed by memorandum from the Simultaneous Unit in Wyoming that your application's identification number for Part A (466-38-2583) and Part B (466-38-3583) were mismatched." The BLM decision went further to say: "Departmental regulation 43 CFR 3112.3(a)(2), clearly states 'any Part B application form which in the opinion of the Authorized Officer: (2) is received in an incomplete state or prepared in an improper manner \* \* \* shall be returned to the remitter as unacceptable!'"

On appeal to the Board, appellant states in part:

I have received, \* \* \* a photo-copy of the Part "A", which was part of my filing for the captioned Tract. This copy clearly shows that the hand-written Social Security Number is correct; the error is in the "fill in the dots" portion of the Part "A".

The Part "B" is correct in both portions, as to my Social Security Number, and all other information.

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My Part "B", the one that was drawn, is correct in all parts. The Part "A" is correct as to my hand-written Social Security Number. The fact that this number is correct, and is written by my own hand, should be sufficient to indentify me to any reasonable person. Because this number is hand-written, it should be held superior to the "fill in the dots" numbers.

(Statement of Reasons at 1, 2).

Under the Mineral Leasing Act, the Department is authorized to issue a noncompetitive oil and gas lease only to the first-qualified applicant. See Udall v. Tallman, 380 U.S. 1 (1965); 30 U.S.C. § 225(c) (1982). With respect to noncompetitive oil and gas leases issued pursuant to the simultaneous filing procedures, a drawing is held to determine priority of consideration. 43 CFR Part 3112. The Secretary is bound by his regulations and may not justify a departure in a single case from an otherwise consistent policy of not accepting applications that do not conform to the regulations. Stella O. Redpath, 80 IBLA 174 (1984); Fen F. Tzeng, 68 IBLA 381, 385 (1982); see McKay v. Wahlenmaier, 226 F.2d 35, 43 (D.C. Cir. 1955).

Under the regulations in existence prior to inauguration of the automated simultaneous procedures, the Board consistently held that failure to complete properly the information required on a simultaneous oil and gas lease application renders the filing defective and requires rejection of the offer under 30 U.S.C. § 226(c) (1982). H. L. McCarroll, 55 IBLA 215, 216 (1981). The regulations in effect at the time appellant's application was filed provide that an application consists of an approved form "completed, signed and filed pursuant to the regulations in this subpart" ant that the "properly completed and signed lease application be filed in the proper office of the Bureau of Land Management." (Emphasis added.) 43 CFR 3112.2-1(a) and (g) (1982). <sup>1/</sup> The proper completion of a lease application is a mandatory requirement and the Board has long held that failure to properly complete such an application must result in rejection of the application. 43 CFR 3112.6-1(a) (1982); Nancy Y. Otani, 58 IBLA 38 (1981).

Beginning on January 1, 1982, the form approved by the Director, BLM for use in the Wyoming State Office was the automated simultaneous oil and gas lease application consisting of Part A (Form 3112.6) and Part B (Form 3112.6a).

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<sup>1/</sup> The current regulation, effective Aug. 22, 1983, provides that an application shall enter on the simultaneous application his social security number or, in lieu thereof, his identification number or BAN supplied by BLM. 43 CFR 3112.2-1(e). 48 FR 33678 (July 22, 1983).

46 FR 55783 (Nov. 12, 1981). The automated form, which is machine readable, was designed to accommodate the automated processing of simultaneous oil and gas lease applications.

The application form consists of two parts, A and B. Part A, which should be submitted only with the applicant's first filing under the automated process, enables BLM to record the applicant's name, address, and identification number. Part B identifies all parcels which the applicant desires to lease on a given drawing list and a separate Part B is submitted for each drawing. The identification number appearing on both parts is the coordinating feature between them. Although the number is designated "SOCIAL SECURITY NUMBER" on the form, it may be a person's social security number, a business entity's employer identification number, or a number assigned by BLM. The number entered on Part A is coordinated with all subsequently filed Part B's.

When completing Parts A and B, an applicant is instructed to print his social security number in designated squares and mark the computer readable circles ("bubbles"), below the numbers corresponding to the printed number. The Part A form completed by appellant contained the correctly marked social security number bubbles. Appellant had marked one of the bubbles incorrectly on the Part B form. As the Board noted in Satellite Energy Corp., 77 IBLA 167, 90 I.D. 487 (1983), the new forms were adopted to accommodate the automated processing of simultaneous oil and gas lease applications in order to expedite lease issuance and reduce the paperwork burden on the public. Entry of the appropriate identification number in a form which is made machine readable by darkening the appropriate circles is required to relate the successful application to the applicant whose name and address appear on Part A of the application on file. Satellite Energy Corp., *supra*.

In decisions styled Newman Partnership, 79 IBLA 281 (1984), and Rocy Mountain Exploration Co., 77 IBLA 15 (1983), the Board continued to follow its established precedent that failure to properly complete the information required on a simultaneous oil and gas lease application renders the filing unacceptable. However, the United States District Court in Wyoming reversed these decisions, relying upon the Tenth Circuit's decision in Conway v. Watt, 717 F.2d 572 (10th Cir. 1983), which held that simultaneous oil and gas applications cannot be rejected for trivial and nonsubstantive reasons. Newman Partnership v. Clark, No. C84-249-K (D. Wyo. Nov. 21, 1984); Rocky Mountain Exploration Co. v. U.S. Department of the Interior, No. C84-0033-B (D. Wyo. Nov. 20, 1984).

The Department determined not to appeal the reversal of the Board's decisions. The District Court decisions have therefore become the final judicial determination of this class of case. In deciding to allow this situation to occur, Solicitor Richardson explained in a letter to the Attorney General that changes in the simultaneous leasing system had obviated the need for an appeal:

We understand from the Wyoming State Office that the automated system has been refined so that mismatched BANs on Parts A and B will now be discovered and the application returned to the

applicant before the random selection of applicants occurs. Thus, the situations which allowed the application in these two cases to be selected before the mismatches were detected are not likely to reoccur. Moreover, the facts in these cases on which BLM relied to reject the applications appear to be no stronger than those in Conway. Thus an appeal to the Tenth Circuit would in all likelihood be unsuccessful. Because these situations probably will not recur and because there is little possibility that the Tenth Circuit would reverse the district court decisions should they be appealed, we recommend that no appeal be filed either case.

BLM concurs in this recommendation, though we have been advised by BLM's Division of Fluid and Mineral Leasing that such concurrence is based on the fact that these situations will not recur, not because the Division agrees with the court's characterization of the mistakes as trivial and inconsequential.

Letter dated February 5, 1985, Solicitor Richardson to Assistant Attorney General Habicht.

By order dated January 17, 1986, the Office of the Solicitor was invited to brief the Board on the questions raised by the mismatch of Parts A and B in violation of 43 CFR 3112.3(a)(2), in view of the position the Solicitor expressed in his letter of February 5, 1985. On June 26, 1986, the Office of the Solicitor declined to brief this matter. In so doing, however, he pointed out that although BLM did not choose to contest the District Court's opinions, the agency did not agree with the court's characterization of the mistakes as trivial or inconsequential, and that BLM regards the District Court decisions as erroneous.

[1] The District Courts' decisions in Newman and Rocky Mountain, finding mismatched Parts A and B identification numbers may not be used as a basis for finding an application to be unacceptable where the application has been included in the drawing and accorded priority, are therefore accepted as controlling authority here. This does not mean the Board will apply the Conway rationale to all defects in simultaneous oil and gas lease applications. Indeed, as the court observed in Brick v. Andrus, 628 F.2d 213, 261 (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." The meaning of this principle is further explained in KVK Partnership v. Hodel, 759 F.2d 814 (10th Cir. 1985), where the court observes that its Conway opinion must be limited by the consideration that: "[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. In the case of mismatched identification numbers, however, the Department apparently has determined that there is no longer a statutory purpose to be served to require a per se rule disqualifying successful applications which contain mismatched numbers. This conclusion is based upon a

changed procedure used by BLM in handling simultaneous oil and gas lease applications, and upon practical considerations concerning the costs of further litigation of this single issue.

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 reversed. The case file is remanded to BLM for issuance of a lease to appellant, all else being regular.

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Franklin D. Arness  
Administrative Judge

We concur.

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James L. Burski  
Administrative Judge

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Bruce R. Harris  
Administrative Judge

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EDWARD F. SCHOLLS

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: Oil and Gas

#### ERRATA

Correct the above-captioned decision as follows:

1. at p. 140, the reference to Parts A and B are transposed. The second full paragraph on p. 140 should be corrected to read:

When completing Parts A and B, an applicant is instructed to print his social security number in designated squares and mark the computer readable circles ("bubbles"), below the numbers corresponding to the printed number. The Part B form completed by appellant contained the correctly marked security number bubbles. Appellant had marked one of the bubbles incorrectly on the Part A form. \* \* \*.

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Franklin D. Amess  
Administrative Judge

We concur.

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James L. Burski    Bruce R. Harris  
Administrative Judge

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Administrative Judge

#### APPEARANCES:

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