

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, finding unacceptable a simultaneous oil and gas lease application filed on an obsolete form. W-92351.

Reversed.

1. Oil and Gas Leases: Applications: Filing

An oil and gas lease application filed on an obsolete (1981) form formerly employed in the simultaneous oil and gas leasing program is properly accepted by BLM where the form is processed in the automated system without difficulty, where the applicant has marked and enclosed the proper remittance, and where the applicant has provided all information necessary to police the system to prevent fraud or abuse.

APPEARANCES: R. Hugo C. Cotter, Esq., Albuquerque, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Albert L. Lang, Jr., has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated March 29, 1985, finding unacceptable his first-drawn application for parcel WY-216 in the December 1984 simultaneous oil and gas lease drawing. BLM took this action because it found that appellant's application was submitted on an obsolete form.

In support of its action, BLM cited regulations 43 CFR 3112.1-3(a) and 3112.3(a). This first regulation, which should be properly cited as 43 CFR 3112.2-1(a), states that "[a]n application to lease under this subpart consists of a simultaneous oil and gas lease application on the form approved by the Director * * *." The second regulation was incorrectly quoted by BLM as providing that "[a]ny Part B application form which, in the opinion of the authorized officer: * * * (2) is * * * prepared in an improper manner * * * shall be returned to the remitter as unacceptable." The current version of 43 CFR 3112.3(a), and the version in effect during the December 1984 filing period, states that a Part B application form shall be deemed unacceptable if, in the opinion of the authorized officer, it is "received in an incomplete state or prepared in an improper manner that prevents its automated processing." (Emphasis added.)

Appellant acknowledges that his application was filed on form 3112-6a (June 1981) rather than on the then-current form 3112-6a (April 1984), but contends that the older form is operationally identical to the newer form:

The only differences between the operating portions of the two forms is [sic] that on the right side the older version has a box marked "QUALIFICATIONS SERIAL NUMBERS (IF APPLICABLE)" while the newer one does not, and in the machine-read portion of the older version the remittance section is captioned "MARK FILING FEE (DOLLARS ONLY)" while it is captioned "MARK TOTAL REMITTANCE (DOLLARS ONLY)" in the newer version. Appellant in hand-writing inserted there the words "Total Remittance" on the form he used and furthermore completed the "bubbles" to show the entire sum remitted including advance rentals and filing fees.

Appellant contends that his application was computer processed without difficulty and, therefore, no violation of 43 CFR 3112.3(a) (1985) has occurred.

A headnote from Shaw Resources, Inc., 79 IBLA 153, 91 I.D. 122 (1984), is quoted by appellant in support of his appeal. That headnote states:

Where a deficiency on an application form filed in the automated simultaneous leasing program neither prevents automated processing nor involves a failure to provide information necessary to police the system to prevent fraud or abuse, such deficiency shall be deemed de minimis, and will not render the application either unacceptable or rejectable.

Appellant contends that there is no suggestion of fraud or abuse in his actions herein. Inasmuch as his application was processed without difficulty, appellant argues that Shaw compels our reversal of BLM. Appellant maintains any "trifling differences" in his application fit into the category of de minimis or nonsubstantive errors which were held in Conway v. Watt, 717 F.2d 512 (10th Cir. 1983), to provide no support for a finding that the application was defective.

No response to appellant's arguments has been filed by BLM.

To begin, a careful reading of 43 CFR 3112.3(a) reveals that this regulation cannot support BLM's finding of unacceptability. As noted above, this regulation proscribes, inter alia, an application prepared in an improper manner that prevents its automated processing. Appellant's application was selected with first priority in the December 1984 drawing, and such selection occurs only after the application is processed. The conclusion is clear, therefore, that any discrepancies in the 1981 form did not prevent its automated processing in 1984. Thus, 43 CFR 3112.3(a) is inapplicable.

We look now to regulation 43 CFR 3112.2-1(a), BLM's alternate grounds for finding appellant's application unacceptable. That regulation clearly states that an application must be filed on "the form approved by the Director." (Emphasis added.) An earlier version of this regulation required

the application to be filed "on a form approved by the Director." (Emphasis added.) 43 CFR 3112.2-1(a) (1981). The change from the indefinite "a" to the definite "the" was said by the Department to be a "clarifying [change]." 43 FR 33656 (July 22, 1983). This clarification may properly be construed to require that an applicant in a simultaneous oil and gas lease drawing use only one, specific application form, i.e., the current form. This appellant failed to do.

Where, as here, appellant's obsolete form was processed without difficulty in the Department's automated processing system and appellant foresaw the need for marking and enclosing the proper remittance, we must inquire whether appellant's failure to satisfy 43 CFR 3112.2-1(a) can support a decision adverse to appellant. Appellant correctly calls our attention to Conway v. Watt, *supra*, wherein the Court of Appeals held that an applicant's failure to date his application, filed during the applicable filing period, was a nonsubstantive error and would not support a finding that the application was defective. Conway served to limit our holding in Shaw Resources, *supra*, in which we sought to define those deficiencies that would render an application either unacceptable or rejectable. Therein, the Board focused on those deficiencies that prevent automated processing, which phrase was given an expansive reading, and those deficiencies that limit the Department's ability to police the simultaneous system in order to prevent fraud or abuse. Appellant's use of an obsolete form fits into neither of these categories in our judgment.

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.

John H. Kelly
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge

