

DUGAN PRODUCTION CORP.

IBLA 86-1516

Decided August 11, 1988

Appeal from a decision of the Director, Minerals Management Service, affirming an order assessing late payment charges. MMS 85-186-O&G.

Reversed.

1. Administrative Procedure: Generally--Administrative Procedure: Administrative Record--Evidence: Generally--Evidence: Presumptions--Minerals Management Service--Oil and Gas Leases: Royalties

An assessment of late payment charges by MMS cannot be affirmed if the administrative record submitted to the Board of Land Appeals by the Director, MMS, does not contain documents conclusively showing that the lessee failed to pay royalty timely. In the absence of the original payment vouchers duly date stamped to show when they were received (or other suitable proof), it cannot be found through the presumption of regularity that they were not timely filed.

2. Administrative Procedure: Generally--Administrative Procedure: Administrative Record--Evidence: Generally--Minerals Management Service--Oil and Gas Leases: Royalties

When a notice of appeal to the Board of Land Appeals is filed from a decision of the Director, MMS, MMS is required to submit the complete, original casefile, containing all documents relating to the dispute at hand. Failure to include documents establishing relevant facts may prevent the Board from affirming the decision on appeal.

APPEARANCES: Robert G. Stovall, Esq., Farmington, New Mexico, for appellant; Peter J. Schaumberg, Esq., et al., Office of the Solicitor, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

On July 11, 1985, the Royalty Management Program (RMP) Office, Minerals Management Service (MMS), in Denver, Colorado, issued Bill for Collection No. 05500158, assessing a total of \$214.78 in late payment charges against Dugan Production Corporation (Dugan). Dugan filed a timely appeal of this bill with the Director, MMS, as provided in 30 CFR Part 290. By decision dated April 7, 1986, the Director, MMS, affirmed these charges, less a credit against the bill of \$18.21. Dugan has appealed to this Board from the Director's decision.

MMS billed Dugan for late payment charges because its payment of royalties due on production for the month of October 1984 was assertedly not timely filed. Oddly, the Director's decision is completely silent as to the date the payment was received by RMP. However, based on a memorandum in the file from RMP to the Director, MMS, it appears that MMS believes that RMP received Dugan's payment on December 5, 1984, 5 days after the due date of November 30, 1984. ^{1/}

From the beginning, Dugan has disputed the accuracy of the December 5, 1984, receipt date, arguing that the payment was made on November 30, 1984, as required. In support of its belief, Dugan has submitted evidence showing that it shipped the payment by air on November 30, 1984, to RMP in Denver with instructions to the shipping company to hand deliver it by 4 p.m. that day. The Director's decision affirming the late payment charge relied solely on the presumption of regularity which supports the official acts of public officers. MMS has not provided any physical evidence whatsoever to support its finding that the payment was not received by RMP until December 5, 1984.

[1] On the basis of the record before us, we are unable to affirm the Director's holding that the presumption of regularity applies in this case. There is simply nothing in the record, other than unsupported assertions, showing when MMS received Dugan's payment. Absent a record supporting the agency's factual determinations, the Board cannot sustain a finding applying the relevant law. Conoco, Inc., 96 IBLA 384 (1987); see also Fred D. Zerfoss, 81 IBLA 14 (1984); and Soderberg Rawhide Ranch Co., 63 IBLA 260 (1982). In this case, we cannot affirm assessment of late payment charges in the total absence of any documentary proof that the payment was late.

It is well recognized that the presumption of regularity creates a rebuttable evidentiary presumption in some cases that Government officers have discharged their duties properly, and we have specifically applied such presumption in finding that a document bearing a Government date stamp was in fact received on the indicated date. United States v. Chemical Foundation, 272 U.S. 1, 14 (1926); Whelan's Mining & Exploration, Inc., 58 IBLA

^{1/} Dugan's notice of appeal to the Director, MMS, alludes to information on MMS' bill for collection in which MMS indicated that it did not receive the payment "until December 5, [1984,] five days after they were transmitted." However, we are unable to confirm this, as there is no complete copy of the bill for collection in the record.

127 (1981); and Henry D. Friedman, 49 IBLA 97 (1980). However, at a minimum, we require submission of the date-stamped documents before the presumption can be applied. In the absence of the original payment vouchers submitted by Dugan, duly date stamped to show that they were untimely filed (or other suitable proof), we have nothing on which to base a presumption of regularity.

Since MMS has provided no proof as to the date of filing, the material provided by Dugan, although far from conclusive, preponderates here.

[2] Apart from the deficiency noted above, we must note officially that the administrative record submitted by MMS to this Board is otherwise inadequate. It commences only in August 1985 with the filing of the notice of appeal to the Director and, as noted above, contains no documentation whatsoever concerning the Dugan's payment in late 1984, even though this payment is directly at issue here. Further, the record does not contain a complete copy of Bill for Collection No. 05500158, which is the subject of this appeal.

MMS is reminded of its obligation to submit the complete, original administrative record to this Board, including all original documentation involved in the matter. See Mobil Oil Exploration & Producing Southeast, Inc., 90 IBLA 173, 177 (1986). Failure to provide an adequate administrative record that contains documentation establishing relevant facts may, as in this case, result in our being unable to affirm decisions by MMS.

Further, as we explained in Mobil Oil Exploration & Producing Southeast, Inc., *supra*, the agency casefile must be complete because it may be subject to direct judicial scrutiny. It is well established that, absent a complete record, a reviewing court is incapable of complying with the procedural requirements statutorily mandated by the Administrative Procedure Act (APA), 5 U.S.C. || 501 through 706 (1982). See, e.g., Higgins v. Kelley, 574 F.2d 789, 792 (3rd Cir. 1978). Where the announced validity of the agency's action is not sustainable on the administrative record made by that agency, courts are instructed to vacate the agency decision and remand the matter for further consideration. Camp v. Pitts, 411 U.S. 138, 143 (1973).

When a suit for judicial review of Departmental action is filed, the Board forwards to the reviewing court the agency casefile that it has used, together with pleadings filed with it by the parties. In so doing, the Board is required to certify, under oath, that the records before it constituted the agency's complete administrative record in the matter, so that the reviewing court may meet its statutory requirements under the APA. Thus, the onus is on the Board to ensure that it has received the complete file from the Departmental agency that is the sole repository of documentation on the matter, in this case, the RMP office, MMS. By requiring Departmental agencies to assemble case records prior to administrative review, the Board not only ensures that it will have an adequate basis for intelligent review of the correctness of the agency's decision, but also greatly facilitates handling of appeals to the judiciary and, ultimately, avoids having decisions by agencies of the Department vacated on judicial review.

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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.

David L. Hughes
Administrative Judge

I concur:

John H. Kelly
Administrative Judge

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