

CLARENCE SOUSER

IBLA 89-120

Decided March 22, 1989

Appeal from a decision of the Alaska State Office, Bureau of Land Management, denying petition for reinstatement of terminated oil and gas lease AA-49200-D.

Affirmed.

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

Reinstatement of a terminated oil and gas lease pursuant to 30 U.S.C. | 188(c) (1982) requires a showing by the lessee that the late rental payment was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after the due date is not reasonable diligence. The complexity of the lessee's business affairs will not justify a late payment.

2. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals

BLM's cashing a late rental check and depositing it in an unearned account does not constitute acceptance of rental payment or a determination that a terminated oil and gas lease will be reinstated.

APPEARANCES: Clarence Souser, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Clarence Souser has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated October 14, 1988, denying his petition for class I reinstatement of oil and gas lease AA-49200-D, which terminated on its anniversary date, June 1, 1988, for failure to pay rental on or before that date.

By notice dated August 3, 1988, BLM informed appellant that the lease had terminated automatically by operation of law for failure to pay rental on or before the anniversary date. BLM's notice informed appellant of his right to petition for reinstatement of the lease pursuant to 30 U.S.C. | 188(c) (1982) (class I reinstatement), and 30 U.S.C. | 188(d) (1982)

(class II reinstatement). BLM's notice set forth the conditions for reinstatement under both class I and class II procedures.

On October 4, 1988, appellant filed a petition for reinstatement under class I. Appellant enclosed a copy of his check dated May 30, 1988, for his rental payment and pointed out that the check had been endorsed by BLM on June 13, 1988, and marked paid by the bank on June 16, 1988. Appellant asserts that this meets the requirements for a class I reinstatement.

In its decision BLM noted that the rental payment received on June 13, 1988, was not mailed until June 10, 1988, after the anniversary date, as evidenced by the U.S. Postal Service postmark date on the envelope. BLM concluded that appellant's petition did not show reasonable diligence in mailing the payment or a justifiable reason for the delay in payment as required for a class I reinstatement under 43 CFR 3108.2-2(b). Therefore, BLM denied his petition.

In his statement of reasons, appellant reiterates that his check dated May 30, 1988, was cashed by BLM within the 20-day time period required for a class I reinstatement. Appellant contends that this constitutes reinstatement of the lease because the check was not refused.

Further, appellant asserts that his payment was delayed because he was involved in trying to complete a land deal at that time. Appellant also states that he sent two checks to BLM in October 1988 for reinstatement of his lease and that these checks were not refused.

[1] Section 31(c) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(c) (1982), provides that where a lease has terminated and the lessee has paid the full rental within 20 days after the lease anniversary date, the Department may, under certain circumstances, reinstate the lease, if the lessee shows that failure to pay on or before the anniversary date was justifiable or not due to a lack of reasonable diligence. See 43 CFR 3108.2-2(a) (class I); Ann L. Rose, 92 IBLA 308 (1986); Melvin P. Clarke, 90 IBLA 95, 97-98 (1985). The burden of showing that the failure to pay on or before the anniversary date was justified or not due to a lack of reasonable diligence is on the lessee. 43 CFR 3108.2-2(b).

It is well established that mailing a rental payment after the lease anniversary date does not constitute reasonable diligence. Ann L. Rose, supra at 310, and cases there cited. Failure to exercise reasonable diligence may be considered justifiable if it is demonstrated that, at or near the anniversary date, there existed sufficiently extenuating circumstances outside of the lessee's control which affected his actions in failing to make timely payment. Freedom Oil Co., 87 IBLA 71 (1985); Dena F. Collins, 86 IBLA 32 (1985). The key component of this test is that the factors which caused the late payment must be outside the control of the lessee. See Ram Petroleum, Inc. v. Andrus, 658 F.2d 1349 (9th Cir. 1981); Ramoco Inc. v. Andrus, 649 F.2d 814 (10th Cir. 1981), cert. denied, 454 U.S. 1032 (1981). The Board has long held that the complexities of a lessee's business operations or a disruption in the conduct of business affairs which contribute to the failure to pay the annual rental on time will not justify a late

payment. Estate of Arlyne Lansdale, 83 IBLA 190, 194 (1984); Larry W. Ferguson, 81 IBLA 167 (1984). Further, the Board, on numerous occasions, had held that travel, either for business or pleasure, does not ordinarily prevent a diligent person from making payment in advance or arranging for others to make payment in his or her absence. Anthony F. Hovey, 79 IBLA 148 (1984); James M. Chudnow, 62 IBLA 13 (1982), and cases cited therein. Thus, the circumstances alleged by Souser do not justify the late payment, nor has he shown his failure to timely submit the payment was not due to a lack of reasonable diligence.

[2] Appellant asserts that the acceptance of his rental checks is sufficient to bind the Department to reinstate his lease. The cashing of checks and or the deposit thereof in an unearned account does not constitute an acceptance of the payments nor a determination that a lease will be reinstated. A refund for the rental checks tendered after lease termination should occur in due course. Rose L. Terenzi, 68 IBLA 21 (1982); Eugene H. Jankoski, 43 IBLA 323 (1979); Edward Malz, 24 IBLA 251, 83 I.D. 106 (1976).

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 affirmed.

Wm. Philip Horton
Chief Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge