

NYLE EDWARDS

IBLA 89-247

Decided May 30, 1989

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, denying appellant's petition for reinstatement of oil and gas lease WYW 100965.

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.

2. Oil and Gas Leases: Assignments or Transfers

The assignee, upon approval of the assignment, becomes the lessee of the Government as to the assigned interest and is responsible for complying with all lease terms and conditions. The burden rests with the assignee to apprise himself of the lease terms and all rules, regulations, and laws regarding the lease.

APPEARANCES: Nyle Edwards, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Nyle Edwards has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated January 17, 1989, denying his petition for class I reinstatement of oil and gas lease WYW 100965, which terminated on its anniversary date of June 1, 1988, for failure to pay rental on or before that date.

The original lease W-92538 was issued effective June 1, 1985. A partial assignment of 40 acres from lease W-92538 from Petroleum Research Corporation (PRC) to appellant was approved by the Department effective May 1, 1986, and identified as lease WYW 100965.

By notice dated August 16, 1988, BLM informed appellant that the lease had terminated on its anniversary date and that he had the right to petition for reinstatement under 30 U.S.C. § 188(c) (1982) (class I reinstatement) and 30 U.S.C. § 188(d) (1982) (class II reinstatement).

The envelope in which appellant's rental was sent is postmarked June 7, 1988, 6 days after the anniversary date of the lease. A copy of appellant's rental check, dated May 27, 1988, bears a Minerals Management Service date-stamp of June 13, 1988. In his petition for reinstatement filed with BLM, appellant asserted that he met the requirements for a class I petition for reinstatement because he paid his rental within 20 days of the anniversary date and submitted the required filing fee. Appellant stated he received "notices" from BLM for his other leases. ^{1/} Appellant explained that having reviewed his leases after returning from vacation, he noticed that the lease in issue was "due and payable." In its decision denying reinstatement BLM ruled that appellant had not met the requirements of 30 U.S.C. § 188(c) (1982), for class I reinstatement because the late payment was not legally justifiable and did not constitute reasonable diligence.

In his statement of reasons, appellant asserts that he purchased the lease from PRC on October 18, 1985, and that in March 1986 he executed copies of "Title Transfers" which he sent to PRC. PRC had requested appellant to send the rental to it (PRC) in the last part of May 1986. Subsequently, he learned that PRC was involved in litigation concerning charges of racketeering and improper sale of securities and oil and gas leases. Appellant contends that he called and wrote BLM requesting copies of the Title Transfer but that BLM never returned his calls. Upon inquiry to the County Clerk's office in Washakie County, Wyoming, appellant was informed that lease W-92538 was recorded in his name with the same legal description as shown on the original purchase agreement.

Appellant refers to a letter dated February 20, 1989, from BLM in which BLM stated: "Your partial assignment out of WYW92538, the approval of which created lease WYW100965, was approved effective May 1, 1986, and mailed from this office on May 19, 1986. This document was not returned to our office as undeliverable and it is presumed that you received it." Appellant contends that he never received a copy of an approved lease assignment from BLM.

Appellant asserts that he did not know the rental due date because he had not received a notice from BLM that rental was due or a copy of the assignment documents. Appellant states he thought the payment was due in late June or early July.

We are unable to accept appellant's argument that he did not know that he was responsible for the lease rental for 1988 or that the due date for the rental was June 1, 1988. The record establishes that the annual

^{1/} We presume appellant is referring to a courtesy notice from BLM reminding the lessee that rental is due.

rental due June 1, 1987, was timely paid by appellant as the lessee of record on May 28, 1987. As noted in BLM's correspondence to appellant dated February 20, 1989: "Based on * * * the fact that Minerals Management Service received your 1987 rental for WYW100965, it is presumed that you are familiar with the rental terms of the leases."

[1] Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides in part that "upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law." Such lease, however, may be reinstated under section 31(c), 30 U.S.C. § 188(c) (1982), if the rental was paid within 20 days after the anniversary date and upon a showing by the lessee that the failure to pay on or before the anniversary date "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." See 43 CFR 3108.2-2(a) (class I reinstatement); 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, 75 (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, on numerous occasions, has held that travel, either for business or pleasure, is not a circumstance beyond an individual's control and 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 a vacation will not justify late payment. Also, the Board has held that reliance upon receipt of a courtesy notice can neither prevent an oil and gas lease from terminating nor serve to justify a failure to timely pay the lease rental. Harry L. Bevers, 84 IBLA 158 (1984); Larry W. Ferguson, 81 IBLA 167 (1984); Harry C. Peterson, 75 IBLA 195 (1983).

[2] Here, appellant's partial assignment was approved by the Department effective May 1, 1986. An assignee, upon approval of the assignment, becomes the lessee of the Government as to the assigned interest and is responsible for complying with all lease terms and conditions. Dale Carr, 45 IBLA 183 (1980). The terms of the assignment form signed by appellant on February 24, 1986, specifically set forth the assignee's responsibility for continued compliance with all the original lease terms, including payment of annual rental. Moreover, the lease terms expressly state that rental is due

on the anniversary date of the lease and failure to timely pay results in automatic termination of the lease. The burden rests with the assignee to apprise himself of all rules, regulations, and laws regarding the lease. C. J. Streit, 44 IBLA 285, 288 (1979). Thus, appellant, having agreed to be bound by the terms of the lease, is presumed to know those terms, as well as the requirements of relevant statutes and duly promulgated regulations. See Rharrc Associates, 68 IBLA 92, 95 (1982).

Appellant has neither justified his failure to timely submit his rental payment nor presented evidence that he exercised reasonable diligence. As Congress established that one of those elements must be present before reinstatement may be granted, the Department is without authority to reinstate the lease under the class I reinstatement procedure.

Accordingly, pursuant to the authority delegated to the Board 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