

WILLIAM F. CORKRAN

IBLA 88-214

Decided April 10, 1990

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, denying William F. Corkran's petition for class II reinstatement of oil and gas lease W-93895.

Affirmed as modified.

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

For class II reinstatement, the lessee must tender the back rental and royalty at the increased rates accruing from the date of termination, together with a petition for reinstatement within 60 days from the date of receipt of the Notice of Termination. Submission of back rental that is deficient may only be cured during the 60-day period allowed for filing for reinstatement.

APPEARANCES: W. F. Corkran, pro se.

OPINION BY ADMINISTRATIVE JUDGE KELLY

William F. Corkran (Corkran), has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated December 15, 1987, denying his petition for class I or class II reinstatement of oil and gas lease W-93895.

BLM issued lease W-93895 to Curtis Basinger effective August 1, 1985. ^{1/} The lease was assigned to Corkran by an assignment executed on March 1 and approved by BLM on May 1, 1987. Corkran mailed the annual rental payment due August 1 in an envelope postmarked August 3, 1987. By notice dated August 18 and received August 24, 1987, BLM informed Corkran that his lease had terminated for failure to pay rental on or before the anniversary date of the lease.

Section 31 of the Mineral Leasing Act, as amended 30 U.S.C. § 188(b) (1982), provides that "upon failure of a lessee to pay rental on or before

^{1/} The leased lands consisted of a 40.11-acre parcel described as lot 1, sec. 1, T. 43 N., R. 73 W., sixth principal meridian, Campbell County, Wyoming.

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 * * *." When adopting this statutory language Congress mandated the automatic termination of a lease when a lessee fails to pay the rental on or before the anniversary date. Termination is automatic and is not a result of Departmental action. Oil Resources, Inc., 28 IBLA 394, 405, 84 I.D. 91, 97 (1977).

By notice dated August 18, 1987, BLM informed appellant that the lease had terminated automatically by operation of law for failure to pay rental on or before the anniversary date, August 1, 1987. This 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). The notice set forth the conditions for reinstatement under both class I and class II procedures.

Appellant petitioned for reinstatement under both class I and class II. Although BLM denied his petition under both classes, he challenges only the denial of his class II petition on appeal. The instructions for filing a class II reinstatement were set out in the Notice of Termination and provide:

Class II Reinstatement. The petition for reinstatement may also be considered pursuant to Public Law 97-415 (30 U.S.C. 188(d)) and 43 CFR 3108.2-3. Under these provisions, the right to reinstatement is subject to the following conditions and procedures:

(1) that a new oil and gas lease has not been issued for any of the lands affected by the terminated lease;

(2) that it is shown to the satisfaction of the authorized officer that failure to pay was inadvertent:

(3) that the lessee agrees to the new lease terms increasing rental and royalty rates as described below:

- for competitive lease rental at a rate of \$10 per acre, or portion thereof, per year and a royalty at a rate of not less than 16-2/3% computed on a sliding scale and at a rate which shall be not less than 4 percentage points greater than the competitive royalty schedule then in force;

- for noncompetitive leases which have been determined to be within a known geologic structure prior to the filing of a petition to reinstate, the rental at a rate of \$7 per acre, or fraction thereof, per year and a royalty at the rate of not less than 16-2/3%.

(4) that the lessee pays BLM the cost of publishing the notice of the proposed reinstatement in the Federal Register; and

(5) that a petition for reinstatement is filed in this office within 60 days after receipt of this Notice, and it is submitted with:

- an administrative fee of \$ 500 per lease;
- all required rental including back rental and/or royalty which has accrued from the date of termination or the lease at the rate identified in item (3) above;
- a \$125 deposit to insure payment of the cost of publication in the Federal Register; and
- an executed Amendment of Lease Terms form (enclosed).
[Emphasis added.]

Corkran filed a petition for reinstatement by letter dated September 30, 1987, which was received by BLM on October 2, 1987. In his petition he sought class I reinstatement, and if class I reinstatement is denied, class II reinstatement. Corkran stated: "At the time the lease payment was due, I was delayed overseas on business in the performance of my position as Vice President - International Operations for my firm. I made payment immediately on my return, which apparently was postmarked one day late." A \$25 check to cover the nonrefundable filing fee was enclosed. Appellant also enclosed a second check for \$944.10 to cover the cost of a class II reinstatement, and agreed to be bound by the increased rental and royalty terms. The petition for reinstatement set forth the calculations Corkran had made when arriving at \$944.10 as being the amount due:

Unpaid Rental - 40.11 acres @ 10.00/acre \$401.10	
Less - Rental paid	<u>82.00</u>
	\$319.10
Administrative Fee	500.00
Registration Deposit	<u>125.00</u>
	<u>\$944.10</u>

When making the calculation Corkran failed to round up to the nearest full acre. Thus, his calculation of the rental due was \$401.10 rather than \$410, and was \$8.90 short of the full amount.

BLM issued its decision denying both class I and class II reinstatement on December 15, 1987. Class I reinstatement was denied because Corkran had mailed the annual rental payment due August 1 on the 3rd of August (as shown by the postmark on the envelope). BLM held that mailing the rental payment after the due date demonstrated a lack of reasonable diligence, and that appellant's absence from the country on business on the anniversary date (as stated in his petition for reinstatement) was not sufficient justification for his failure to submit the lease payment in a timely manner.

The decision set forth two reasons for denying appellant's petition for class II reinstatement: (1) the amount submitted with the petition was deficient by \$8.90; and (2) Corkran had failed to return a signed statement

in accordance with 43 CFR 3108.2-3(b)(2)(iv), specifying his agreement to be bound to payment of future rentals at the applicable rates for a reinstated lease and future royalties at the rates set forth in 43 CFR 3103.3-1. Corkran then appealed to this Board.

A class I reinstatement may be granted if a petition is filed in a timely manner and the petitioner demonstrates that the failure to make timely payment of the annual rental was either justified or not due to a lack of reasonable diligence. 43 CFR 3108.2-2(b). In the decision on appeal BLM based its denial of appellant's petition for class I reinstatement on this Board's decision in Lloyd M. & Adelheid A. Patterson, 34 IBLA 68 (1978), and found appellant had neither shown reasonable diligence when submitting the lease rental nor submitted a justifiable reason for the delay. See 30 U.S.C. § 188(c) (1982); Clarence Souser, 108 IBLA 59 (1989). In his statement of reasons on appeal, appellant does not challenge BLM's denial of class I reinstatement.

[1] Corkran does challenge BLM's denial of class II reinstatement, stating in part:

At the time I overlooked the words or portion thereof and hence remitted \$401.10 which was \$8.90 short. My petition was dated September 30th and received by you on October 2nd; and had I been advised at that time of this error, I would certainly have corrected it before the deadline which I believe was October 18, 1987. I have attached herewith my check covering the deficiency for \$8.90. [Emphasis in original.]

Corkran also addresses the second reason for rejection of his application, noting that the agreement required by 43 CFR 3108.2-3(b)(2)(iv) had never been tendered for his signature. Referring to his application for class II reinstatement, which had been signed by him, he contends that the statement required by the regulations had been included in his petition.

Class II reinstatement of an oil and gas lease is authorized by 30 U.S.C. § 188(d) and (e) (1982). A class II reinstatement is permitted in two circumstances. A lease may be reinstated when the lessee has failed to make payment within 20 days of the anniversary date of the lease and shows that the failure to make timely payment "was justifiable or not due to lack of reasonable diligence." 30 U.S.C. § 188(d)(1) (1982). A lease also may be reinstated under class II when "no matter when the rental is paid after termination, it is shown to the satisfaction of the Secretary of the Interior that such failure was inadvertent * * *." Id. Corkran's failure to submit the rental payment before the anniversary date falls within the definition of "inadvertent." See Toraro Neishi, 102 IBLA 49 (1988).

Subsection 188(d) provides that a lease which terminates after January 12, 1983, may not be reinstated under class II unless

a petition for reinstatement together with the required back rental and royalty accruing from the date of termination is filed on or before the earlier of --

(i) sixty days after the lessee receives from the Secretary notice of termination, whether by return of check or by any other form of actual notice, or

(ii) fifteen months after termination of the lease. [Emphasis added.]

Id. at § 188(d)(2)(B).

Since August 16, 1983, both Congress and the Department have consistently interpreted the term "required back rental" to be the minimum future rental set forth in 30 U.S.C. § 188(e)(2) (1982), i.e., \$10 per acre per year for competitive leases. Thus, in order to be entitled to a class II reinstatement, a lessee must pay back rental at the rate of \$10 per acre per year within 60 days of receipt of a termination notice. As noted above, this requirement was embodied in BLM's August 18, 1987, decision. Failure to submit the back rentals at the increased rate properly results in denial of a petition for a class II reinstatement. Monica V. Rowland, 90 IBLA 349 (1986); Hugh Carter Crutchfield Trust, 87 IBLA 27 (1985); Kurt W. Mikat, 82 IBLA 71 (1984). See R. Gerald Jones, 101 IBLA 57 (1988).

Appellant submits that he overlooked BLM's stated requirement that \$10 also be paid for fractional acreage and requests that his tender of the deficiency of \$8.90 be accepted. We first note that it should have been clear to appellant that it was incumbent on him to remit \$10 per acre, or for any "portion thereof." The requirement was plainly set forth in the Notice of Termination. In addition the requirement was not new. When the competitive bid for this lease was accepted and the lease forms transmitted to the offeror for execution, \$82 was asked for the first year's rental for the 40.11 acres to cover "rental of \$2 per acre, or fraction thereof * * *." The same rental was paid thereafter. Although appellant sought to cure the deficiency of \$8.90, 2/ he did not do so within the statutory period allowed for the submission of "a petition for reinstatement together with the required back rental," 30 U.S.C. § 188(d)(2)(B) (60 days after receipt of the Notice of Termination). 3/

2/ Corkran's submittal was deficient by 2.2 percent. We note that 43 CFR 3108.2-1(b) permits the curing of a timely submitted rental which is nominally deficient. A deficiency shall be considered nominal if it is not more than \$100 or more than 5 percent of the total payment due, whichever is less. However, the foregoing provision applies to preclude termination of leases; similar regulations do not exist under the reinstatement provisions whereby a nominally deficient back rental may be cured by the petitioner.

3/ The dissent apparently argues that sufficient money to cover the back rental was submitted with the class II petition inasmuch as monies were tendered with the petition for Federal Register publication costs and other

As for BLM's denial of the class II reinstatement for failure to file an agreement to be bound to the new rental and royalty rates, the record is unclear whether the agreement was actually transmitted to the appellant with the notice. While the printed form Notice of Termination contains a notation that the agreement form was enclosed, appellant asserts that no copy of the form was attached to the file copy of the Notice of Termination and none is found elsewhere in the case file. In addition, as appellant points out on appeal, his petition for reinstatement included an express statement by petitioner that he agreed to new rental and royalty terms as set by BLM. Under the circumstances, we modify BLM's rejection of the class II petition for reinstatement to the extent the failure to submit the subject agreement was relied upon for rejection. However, appellant's failure to timely tender sufficient money with his application to cover the full amount of the back rental is adequate basis, by itself, for BLM to deny the class II reinstatement.

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 affirmed as modified.

John H. Kelly
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge

fn. 3 (continued)

administrative fees which, the dissent submits, are not required to accompany the class II petition at the time of filing. However, BLM does not have the authority to credit other payments made by a petitioner for separate costs it must absorb towards an underpayment of back rental, which Congress has expressly stated must accompany the petition for reinstatement. The back rental required by 30 U.S.C. § 188(d)(2)(B) (1982) is a separate and distinct payment obligation from the fees required by 30 U.S.C. § 188(e)(3)(B) (1982). Further, as noted in the separate concurring opinion in R. Gerald Jones, 101 IBLA 57, 65 (1988), on proper notice to the lessee, it is a permissible exercise of BLM's discretion for it to require submission by a class II petitioner of the full payment for all sums, back rental, and other fees, at the time of filing. The failure of BLM to cite the proper authority for requirements it is authorized to impose does not, per se, render the instructions for meeting the requirements ambiguous.

ADMINISTRATIVE JUDGE MULLEN DISSENTING:

I find very little fault with the first portion of Judge Kelly's opinion. In fact, if it were mine, the first few pages would sound very much like the majority opinion does now. I would quote the same portion of the Notice of Termination. I would make the same observations and set out the same quotes from the petition for reinstatement. I too would note that Corkran did not challenge the denial of Class I reinstatement and would affirm the BLM holding as to that issue. In order to reach a resolution of the case I would quote and rely upon the same sections of the code as was cited by the majority opinion.

It is only after the statement of the provisions of 43 U.S.C. § 188(d) (1982) in the majority opinion that Judge Kelly and I part ways. I believe that this is a result of the majority giving more weight to the notion that BLM should be free to do anything it wants to do, so long as doing it does not violate some statute or regulation, that it does to the intent and purpose of the statutes and regulations providing for reinstatement. Congress enacted the reinstatement legislation to afford oil and gas lessees an opportunity to reinstate a lease under Class II if the lessee had not intended to let the lease expire and was willing to take on the additional rather steep burdens imposed by the Act. The Act establishing the Class II reinstatement was intended to afford relief from a narrow interpretation of the leasing Act exemplified by BLM's actions in this case.

The decision set forth two reasons for denying appellant's petition for Class II reinstatement: (1) The amount submitted with the petition was deficient by \$8.90; and (2) Corkran had failed to return a signed statement in accordance with 43 CFR 3108.2-3(b)(2)(iv), specifying his agreement to be bound to payment of future rentals at the applicable rates for a reinstated lease and future royalties at the rates set forth in 43 CFR 3103.3-1.

Corkran challenges BLM's denial of Class II reinstatement, because his initial submittal was \$8.90 short. ^{1/} He also objected to the second reason for rejecting his application, noting that the agreement required by 43 CFR 3108.2-3(b)(2)(iv) had never been tendered for his signature. Other than these two items, his application for Class II reinstatement was complete. If he had submitted these two items and BLM had found the application to be in order, he would have been required to take no further action for reinstatement under Class II.

Since August 16, 1983, both Congress and the Department have consistently interpreted the term "required back rental" to be the minimum

^{1/} Corkran's submittal was deficient by 2.2 percent. Although not applicable to this case, I note that 43 CFR 3108.2-1(b) permits reinstatement when a timely submitted rental is deficient by not more than the lesser of 5 percent or \$100.

future rental set forth in 30 U.S.C.A. § 188(e)(2) (1983), i.e., \$10 per acre per year for competitive leases. This is currently codified in 43 CFR 3108.2-3(b)(1). Thus, if the amount tendered had been insufficient to cover the back rental at the rate of \$10 per acre per year, the reinstatement would have been properly denied. As noted in the majority opinion, this requirement was embodied in BLM's August 18, 1987, decision. Failure to submit the back rentals at the increased rate properly results in denial of a petition for Class II reinstatement. Monica V. Rowland, 90 IBLA 349 (1986); Hugh Carter Crutchfield Trust, 87 IBLA 27 (1985); Kurt W. Mikat, 82 IBLA 71 (1984). See R. Gerald Jones, 101 IBLA 57 (1988).

The Notice of Termination, which was carefully quoted in the majority opinion, stated that "[t]he petition for [Class II] reinstatement may also be considered pursuant to Public Law 97-415 (30 U.S.C. 188(d)) and 43 CFR 3108.2-3. Under these provisions, the right to reinstatement is subject to the following conditions and procedures:" (emphasis added; see the full quote in the majority opinion). However, the majority is steadfast in its refusal to examine the statements set out in the Notice of Termination in light of 43 CFR 3108.2-3. That regulation will be found nowhere in the majority opinion, even though it is directly in point. 43 CFR 3108.2-3(b) provides:

(1) For leases that terminate on or after January 12, 1983, consideration may be given to reinstatement if the required back rental and royalty at the increased rates accruing from the date of termination, together with a petition for reinstatement, are filed on or before the earlier of:

(i) Sixty days after the receipt of the Notice of Termination sent to the lessee of record; * * *.

(2) After determining that the requirements for filing of the petition for reinstatement have been timely met, the authorized officer may reinstate the lease if:

* * * * *

(iv) An agreement has been signed by the lessee and attached to and made a part of the lease specifying future rentals at the applicable rates specified for reinstated leases * * * and future royalties at the rates set in § 3103.3-1 of this title for all production removed from such lease * * *.

(v) A notice of the proposed reinstatement of the terminated lease * * * has been published in the Federal Register * * * for which the lessee shall reimburse the Bureau for the full costs incurred in the publishing of such notice; and

(vi) The lessee has paid the Bureau a nonrefundable administrative fee of \$500. [Emphasis added.]

As can be seen, the process of reinstatement under Class II is a two-step process. The first step is to determine if the requirements for filing a petition for Class II reinstatement have been met. If they have, the second step is to do those things necessary to reinstate the lease. Thus, what we now have before us is the question of whether the appellant has met all of the statutory and regulatory requirements for filing a Class II reinstatement.

A careful reading of the regulation discloses that submittal of the \$500 filing fee and the \$125 deposit within the 60-day period is not a statutory or regulatory requirement for timely filing a petition for reinstatement. Inasmuch as this requirement is not a condition for timely filing, a failure to submit these amounts is a curable error if the amount submitted is sufficient to cover the rental and royalty at the increased rates accruing from the date of termination. The applicant should be afforded an opportunity to submit additional funds. The decision by BLM imposed requirements for a timely petition for reconsideration which exceeded those set forth in the regulations. See R. Gerald Jones, supra at 62.

I note there is nothing in either the statute or regulations which precludes BLM from adopting a policy which requires deposit of the full amount owing, including the \$500 filing fee and the \$125 deposit at the time of filing the petition for reinstatement. ^{2/} However, the regulation cited as the basis for the requirement for filing the additional funds is clear and unambiguous regarding what is required for filing a timely petition for reinstatement. Submittal of the \$500 filing fee and the \$125 deposit is not required for a timely filed petition for reinstatement. After considering the statutory language, the applicable regulation, and the wording of the Notice of Termination, I find the language of the instructions to be contrary to the statute and regulation cited as the basis for the requirements. This obvious conflict between the language in the instructions and the regulation cited as the basis for that language renders the language of the instructions ambiguous. Corkran's failure to pay the full amount was a curable error, and the additional funds have been tendered. BLM's finding that the petition for reinstatement was untimely is in error and should be reversed.

I find the denial of the Class II reinstatement for failure to file an agreement to be bound to the new rental and royalty rates to be in error for the same reason. The printed form Notice of Termination contains a notation that the agreement form was enclosed. However, no copy of the agreement form was attached to the file copy of the Notice of Termination and none is found elsewhere in the case file. Appellant states he never received one.

^{2/} See the discussion in the concurring opinion in R. Gerald Jones, supra. If BLM had clearly specified that submittal of the \$500 filing fee and the \$125 deposit within the 60-day period was a requirement additional to those set forth in 43 CFR 3108.2-3(b)(2), the minority position in that case would be given greater consideration.

There is nothing, other than the notation on the pre-printed Notice of Termination, that indicates that an agreement form was enclosed with the Notice of Termination. Appellant stated in his application for reinstatement that he agreed to be bound by the new terms. These facts lead to the logical conclusion that he should be afforded the opportunity to execute and return the agreement form prepared by BLM.

R. W. Mullen
Administrative Judge

114 IBLA 85

