

Editor's note: Reconsideration denied by Order dated Aug. 22, 1991.

G. H. ALLEN ET AL.

IBLA 90-193

Decided May 30, 1991

Appeal from a decision of the Colorado State Office, Bureau of Land Management, requiring posting of a bond as a condition of approval of an assignment of a coal lease to assignees. C-033301.

Appeal dismissed.

1. Coal Leases and Permits: Assignments and Transfers--Rules of Practice:
Appeals: Standing to Appeal

Standing to appeal a decision to the Board requires that an appellant be a party to the case adversely affected by the decision appealed. An assignee who has filed an application for approval of an assignment of a coal lease lacks standing to appeal a decision finding the assignment subject to approval on provision of a lease bond where the bond requirement is not contested.

APPEARANCES: G. H. Allen, Hothkiss, Colorado, for appellants; Richard L. Fanyo, Esq., Denver, Colorado, for assignors; Lyle K. Rising, Esq., Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

This appeal has been filed by G. H. Allen on behalf of himself and his associates 1/ from a December 19, 1989, decision of the Colorado State Office, Bureau of Land Management (BLM). That decision noted that appellants had filed a request for approval of an assignment to them of coal lease C-033301 in October 1988. The lease assignment was from Grand Mesa Properties (GMP), lessee, and Blue Ribbon Coal Company (Blue Ribbon), sublessee. The BLM decision conditioned approval of the assignment on appellants' submission of an acceptable coal lease bond in the amount of \$5,000. The decision noted that all other regulatory requirements for approval of the assignment have been met.

Appellants' statement of reasons (SOR) for appeal acknowledges that appellants have accepted the assignment of the coal lease (Exhs. 4 and 6 to

1/ The notice of appeal was filed on behalf of several coparties: Gifford H. Allen, Corinne Allen, Dean Allen, Carrie Allen, Paul Allen, and Erma J. Allen.

SOR) and that they filed a request for approval of the assignment (Exh. 15) with BLM. 2/ Notwithstanding appellants' prior request for approval of the assignment, they now challenge the BLM approval decision on several diverse grounds. They argue that BLM should not have accepted payment of certain assignment filing fees by the assignors. Appellants challenge the BLM finding that other regulatory requirements for approval of the assignment have been met. Specifically, they argue that BLM erred in finding the lease account was in good standing with respect to the payment of advance royalty for the coal lease. The essence of this controversy is summed up in appellants' contention that approval of the assignment under the circumstances would be in breach of certain third party agreements: "For the reasons given and shown, the Allens request that the December 19, 1989 decision be withdrawn and that any further action on the assignment process be suspended until the Allens and GMP have reached agreement on all issues involved" (SOR at 6). 3/

Counsel for the assignors of the coal lease, GMP and Blue Ribbon, has filed an answer to appellants' SOR. Assignors contend the appeal should be dismissed for lack of standing on the ground that appellants were not adversely affected by the BLM decision. The answer points out that appellants' request for approval of the assignment was granted by the decision subject to the bond requirement which is not contested. Assignors state that the lease account was in good standing in that assignors had paid both the rent due on July 1, 1989, and the advance royalty for the production year ending January 31, 1989, and no further rent or royalty was due as of the date of the BLM decision. Further, assignors contend the statutory and regulatory requirements for consent of the Department to assignment of a coal lease are solely for the benefit of the Federal Government and a private party has no standing to object to a BLM finding that the requirements have been satisfied.

2/ The case file contains a request for approval of assignment executed by appellants on Oct. 4, 1988, and filed with BLM on Oct. 11, 1988.

The assignment executed Dec. 22, 1986, assigned to appellants (1) coal lease C-033301 and (2) assignors' rights in sublease I between United States Steel Corporation and Sunflower Energy Corporation and sublease II between United States Steel and GMP. Although the initial assignment included lot 21 in addition to certain other lands, this tract was stricken from the request for approval of the assignment pursuant to a release executed by the parties to the assignment on Sept. 21, 1988. By letter filed with BLM on the same day as the request for approval of assignment, the assignors relinquished the lease as to lot 21. By letter filed with BLM on Mar. 1, 1989, appellants consented to the relinquishment of lot 21.

3/ In a Jan. 4, 1990, letter filed with BLM on Jan. 8, 1990, G. H. Allen protested the BLM decision of Dec. 19, 1989, on similar grounds with the addition of a contention that "assignment of just Sublease # 1 was all that was really needed." BLM rejected the protest by letter of Jan. 8, 1990, advising G. H. Allen that all regulatory requirements for approval of the assignment had been met except for a lease bond and that failure to comply with the requirement to provide a bond within the time allowed would result in the denial of the assignments of lease C-033301 and its subleases.

In response, appellants contend that they were adversely affected by the BLM decision in that it was rendered before appellants had been able to determine the extent of any unpaid royalties regarding the lease and before they were able to determine the validity of the assignment of the lease to them by assignors. Appellants state that the BLM requirement to post a bond is not an issue with them.

In a supplemental answer, assignors explain that the lease account was indeed in good standing as of the time of the BLM decision. Assignors contend that any uncertainty which appellants may have regarding their rights under the assignment does not constitute an adverse affect of the BLM decision.

We have advanced this case on our docket for review in light of the threshold issue of the standing of appellants. It is clear from the administrative record in this case, including the submissions on appeal by the parties hereto, that there is a dispute between the assignees and the assignors regarding the terms of the assignment of the subject coal lease. Indeed, between the execution of the assignment on December 22, 1986, and the filing of the request for approval of the assignment in October 1988 there was litigation in the Colorado State courts which culminated in a release dated September 21, 1988. ^{4/} Pursuant to the terms of the release, appellants accepted the December 22, 1986, assignment of the coal lease by the assignors except as to lot 21 which was thereafter relinquished by the assignors. Subsequently, a request for approval of assignment of coal lease C-033301, except lot 21 relinquished by the assignors, was executed by appellants on October 4, 1988, and filed with BLM on October 11, 1988. Thereafter, BLM issued the decision under appeal requiring appellants to file a coal lease bond in the amount of \$5,000 as a condition of approval of the assignment.

[1] Coal leases are subject to assignment with the consent of the Secretary of the Interior. See 30 U.S.C. § 187 (1988); 43 CFR 3453.1(a). As the request for approval of assignment itself clearly states, it is the assignees of the coal lease who have requested approval of the assignment herein. See 43 CFR 3453.2-2(a); Petrol Resources Corp., 65 IBLA 104, 107-08 (1982). ^{5/} Historically, where it is known that there is a dispute regarding the validity or effect of an assignment which the Department has been requested to approve, the Department has declined to adjudicate issues regarding the validity or effect of the assignment and has maintained the status quo until the parties have had an opportunity to settle their dispute by agreement or in court. Petrol Resources Corp., supra at 109. The Board has held that it is improper under such circumstances to reject the

^{4/} See note 2, supra.

^{5/} Accordingly, the assignee has been recognized as having the right to withdraw a request for approval of the assignment. Petrol Resources Corp., supra at 108; Hill v. Williams, 59 I.D. 370, 375 (1947).

assignment at the request of the assignor without notice to the assignee by returning the assignment to the assignor. ^{6/} The BLM decision in the present case was consistent with that practice. The filing with BLM by the parties to the assignment of the executed assignment, the release signed by appellants in September 1988, and the request for approval of the assignment executed by appellants in October 1988 gave every indication that the dispute in this matter had been settled and that appellants were seeking approval of the assignment. It was not until after the BLM decision of December 19, 1989, that appellants manifested their reluctance to allow BLM to approve the assignment.

Since appellants have the ability to withdraw their request for approval of the assignment at any time prior to approval, they have not been adversely affected by the BLM decision. As noted above, the request for approval of an assignment is made by the assignee and, hence, can be withdrawn by the assignee at any time prior to approval of the assignment. The BLM decision required assignees to post a bond as a condition of approval of the assignment. Appellants acknowledge they are not adversely affected by this requirement. Appellants are free to withdraw their request for approval of the assignment, but they may not delay adjudication pending an attempt to negotiate a different agreement with the assignors.

Appellants contend they are adversely affected by the failure of BLM to suspend consideration or withhold approval of the assignment pending further negotiations between assignees and assignors regarding the terms of the lease assignment. However, we find this case distinguishable from Petrol Resources Corp., *supra*, where the unapproved assignee was adversely affected by rejection of the assignment at the request of the assignor. In the present case the assignees, who are the proponents of the assignment, have expressed a desire to withdraw their request for approval as they have a right to do. As we held in Petrol Resources Corp., *supra* at 108: "Logic dictates that since the application for approval of assignment is filed by the assignee, it can only be withdrawn by or returned unapproved to the assignee." We know of no authority for the assignees to require BLM to withhold action on a request for approval of an assignment which they have effectively withdrawn pending the assignees determination whether to reinstate their request for approval. Accordingly, we are unable to find that appellants have been adversely affected by the decision from which they have appealed. Standing to appeal to this Board requires that an appellant be a party to the case and adversely affected by the decision on appeal. 43 CFR 4.410; Donald Pay, 85 IBLA 283 (1985). Appellants have not shown that they are adversely affected by the decision under appeal. Hence, the appeal must be dismissed for lack of standing.

^{6/} However, the right of the lessee/assignor to relinquish a lease while an unapproved assignment is pending has been upheld. James L. Homberg, 67 I.D. 302 (1960).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

C. Randall Grant, Jr.
Administrative Judge

I concur:

James L. Byrnes
Administrative Judge