

DENISE M. WHITE  
ROBERT M. WHITE

IBLA 90-417

Decided July 18, 1991

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease WYW 102291.

Affirmed.

1. Oil and Gas Leases: Reinstatement

A petitioner for reinstatement of an oil and gas lease under 30 U.S.C. § 188(c) (1988) is required to show that failure to timely pay rental was justifiable or not due to a lack of reasonable diligence. Where petitioners failed to show how a late payment was caused by reasons beyond their control, their petition was properly denied.

APPEARANCES: Denise M. and Robert M. White, Utica, Michigan, pro sese.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Denise M. White and Robert M. White have appealed from a May 23, 1990, decision of the Wyoming State Office, Bureau of Land Management (BLM), denying their petition for reinstatement of noncompetitive oil and gas lease WYW 102291. Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1988), and 43 CFR 3108.2-1(a) provide that upon the failure of a lessee to pay rental on or before the anniversary date of a lease on which there is no well capable of production of oil or gas in paying quantities, the lease terminates automatically by operation of law. The Department takes no action to cause such termination; it occurs when a lessee fails to pay rental timely. See Oil Resources, Inc., 28 IBLA 394, 405, 84 I.D. 91, 97 (1977). Because rental payment for lease WYW 102291 was not received on or before the February 1, 1990, anniversary date, the lease terminated automatically.

Notice of the termination was sent to the lessees and they timely sought reinstatement pursuant to 30 U.S.C. § 188(c) (1988) and 43 CFR 3108.2-2 (class I reinstatement). Under this authority, a terminated oil and gas lease may be reinstated where the rental owed is tendered within 20 days of the anniversary date of the lease, upon a showing by the lessee that failure to pay on or before the lease anniversary date was

either justifiable or not caused by lack of reasonable diligence. See Paul J. Stivers, 93 IBLA 97 (1986); Monica V. Rowland, 90 IBLA 349 (1986). Rental was received by the Department on February 14, 1990, in an envelope postmarked February 12, 1990. Thus, the first statutory requirement was satisfied.

The lessees, however, did not state their reasons for the tardy rental payment. They merely indicated that they sought class I reinstatement. BLM denied such reinstatement because the lessees had failed to demonstrate reasonable diligence in mailing the rental, and had not shown that the failure to pay timely was justifiable.

In their statement of reasons for appeal, appellants argue that the rental payment "was delayed due to the fact that we had an emergency situation in Florida that needed immediate attention." They explain that a grandparent was seriously ill and, in the confusion of a hasty departure to attend to this situation, their payment was not timely mailed.

A lessee has failed to exercise reasonable diligence if the rental payment was mailed after the lease anniversary date. Dominic D. Demicco, 92 IBLA 378 (1986). Appellants' payment was received in an envelope postmarked February 12, 1990, and therefore their manner of making payment cannot be considered to have been reasonably diligent. *Id.*

However, failure to pay timely may be considered justifiable if it is demonstrated that, at or near the anniversary date, there existed extenuating circumstances outside a lessee's control that affected the rental payment. Freedom Oil Co., 87 IBLA 71 (1985); Dena F. Collins, 86 IBLA 32 (1985). Those circumstances must be shown to have been proximate in time to the lease anniversary date. Further, they must also have been the "causative factor" for the failure to exercise reasonable diligence in mailing the rental payment. Joanne F. Bechtel, 76 IBLA 1 (1983). Finally, appellants must establish that the factors that caused the late payment were beyond their control. See Ram Petroleum, Inc. v. Andrus, 658 F.2d 1349 (9th Cir. 1981); Ramoco Inc. v. Andrus, 649 F.2d 814 (10th Cir.), cert. denied, 454 U.S. 1032 (1981). When failure to pay rental on time is due to negligence, forgetfulness, or inadvertence, the failure is not justifiable. Edgar B. Stern, 86 IBLA 72 (1985).

Appellants assert that an extenuating circumstance justifying their late payment was illness of a family member. In Billy Wright, 29 IBLA 81 (1977), and C. H. Winters, 34 IBLA 350 (1978), the Board reversed BLM decisions that denied reinstatement of terminated leases, holding there was sufficient evidence to show that illnesses so disrupted the lessees' normal routines they were unable to conduct usual business affairs. In contrast, in Joanne F. Bechtel, 76 IBLA at 3, and William F. Branscome, 81 IBLA 235 (1984), the Board concluded petitioners had failed to show that sickness at or near the lease anniversary date prevented the lessees from conducting their usual affairs and, in each of those cases, affirmed BLM's denial of reinstatement. Thus, an appellant who wishes to establish that untimely payment was caused by circumstances beyond his control must support this allegation with sufficient proof so that this Board can determine the

circumstances shown were the proximate cause for tardy payment. William F. Branscome, 81 IBLA at 237. See also 43 CFR 3108.2-2(b).

In this case, appellants have not established a causal link between the circumstances alleged and their failure to pay rental timely. We are unable, on the record provided, to determine the nature or seriousness of the illness claimed, nor are we able to decide whether the illness so disrupted appellants' routine that they were unable to conduct affairs at the time payment was due. Consequently, we conclude that appellants have not demonstrated that their failure to pay the rental timely was "justifiable."

Appellants are obliged, under the statutory provision creating the remedy of reinstatement, to demonstrate that they were justified in not paying rental timely and are therefore entitled to the relief afforded by the statute. Appellants have been provided with several opportunities to explain in detail how the late payment was due to reasons beyond their control. Without an adequate demonstration that the failure to make timely payment was justified by reasons beyond their control, the petition for reinstatement under the authority of 30 U.S.C. § 188(c) was properly denied. See William F. Branscome, 81 IBLA at 237.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary to the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness  
Administrative Judge

I concur:

Bruce R. Harris  
Administrative Judge

I concur: Bruce R. Harris, Administrative Judge

