

Editor's note: Reconsideration denied by Order dated Sept. 11, 1991.

SYBIL W. TAYLOR

IBLA 90-51, 90-217

Decided July 30, 1991

Appeal from decisions of the Colorado State Office, Bureau of Land Management, denying petitions for class I and class II reinstatement of noncompetitive oil and gas lease COC 33612.

Appeal dismissed in part; decisions affirmed.

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

Where a noncompetitive oil and gas lessee fails to pay annual rental on or before the anniversary date of the lease and no oil or gas is being produced on the lease, the lease automatically terminates by operation of law. BLM may reinstate the lease pursuant to 43 CFR 3108.2-2(a) if the full rental is paid within 20 days of the lease anniversary date, and the failure to timely pay was justifiable or not due to a lack of reasonable diligence. Where BLM approves an assignment of record title in an oil and gas lease to a party on May 12, well in advance of the June 1 anniversary date of the lease, lessee's assertion that she was unable to ascertain whether the assignment had been approved and where to mail the rental payment does not establish that the failure to pay rental timely was justified where she admits that she knew of the approval on or prior to the due date for the payment.

2. Oil and Gas Leases: Reinstatement

A late payment of rental may not be justified on the basis that the lessee did not receive a courtesy notice from MMS.

3. Oil and Gas Leases: Reinstatement

The provisions of 43 CFR 3108.2-2(a) recognize as reasonable diligence the mailing of rental payment to MMS on or before its due date and direct BLM to consider the postmark date in determining when the payment was mailed. This provision tacitly requires that a rental payment must be timely mailed to MMS in such a manner that it has a reasonable chance of being received there. Where a lessee mails the payment to MMS in an envelope

bearing no street address, city, state, or zip code, the payment had no chance of being received by MMS, and the lessee's actions do not constitute reasonable diligence in timely making the rental payment.

4. Oil and Gas Leases: Reinstatement

Late payment of annual rental may be considered justifiable if the untimeliness was proximately caused by extenuating circumstances outside the lessee's control at or near the anniversary date. In the absence of proof of other extraordinary circumstances causing disruption in a lessee's life, deaths in her family almost 8 months prior to the anniversary date of the lease, and a corresponding increase in the complexity of the lessee's business affairs, do not excuse her late payment.

5. Administrative Procedure: Generally--Board of Land Appeals--Rules of Practice: Appeals: Statement of Reasons

If an appellant's notice of appeal did not include a statement of reasons for the appeal, the appellant must file such a statement with the Board of Land Appeals within 30 days after the notice of appeal was filed. Where no statement of reasons is ever filed and no reason is offered for the failure to file, the appeal is properly dismissed.

APPEARANCES: Sybil W. Taylor, Dallas, Texas, pro se.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Sybil W. Taylor (appellant) has appealed from two decisions of the Colorado State Office, Bureau of Land Management (BLM), dated August 9, 1989, and January 9, 1990, rejecting her petitions for class I and class II reinstatement of noncompetitive oil and gas lease COC 33612. Because of the similarity of the issues presented by the two appeals, they are hereby consolidated.

The record reveals that BLM issued a 10-year noncompetitive oil and gas lease, COC 33612, effective June 1, 1982, to appellant for 1,400 acres in Colorado. Effective March 1, 1985, appellant assigned the lease to Amoco Production Company, who held the lease until May 12, 1989, when BLM approved Amoco's assignment of the lease back to appellant. 1/ The anniversary date of the lease was June 1, so that annual rental was required to be paid on or before that date each year.

1/ The assignment was approved effective May 1, 1989.

MMS did not receive annual rental for the lease until June 14, 1989, when it received a rental payment in the amount of \$1,425 from appellant. On June 19, 1989, prior to issuance of notification that the lease had terminated, BLM received a letter from appellant requesting class I reinstatement of the lease, averring that, due to two deaths in her immediate family, her appointment as administrator of these estates, a tax audit, and the fact that the lease assignment was not approved by BLM in time for MMS to send her a pre-addressed envelope, she inadvertently failed to prepare her rental mailing until May 31, 1989, the day before the June 1 anniversary date. No check accompanied this petition for reinstatement. 2/

On June 22, 1989, BLM sent out its form notice that the lease had terminated for failure to pay rental timely. The notice specified the steps necessary for both class I and class II reinstatement.

On July 6, 1989, appellant timely filed a second petition for class I reinstatement, along with a check for the required \$25 filing fee, thus perfecting her petition for reinstatement. 3/ In this correspondence, appellant stated additional reasons for her petition.

On July 13, 1989, appellant filed a photocopy of an envelope, postmarked May 31, 1989, but bearing only the following as an address: "Minerals Management Service[,] O&G[,] Lease Payment Division." No street, city, state, or zip code were listed. Not surprisingly, the envelope bears a notation "Insufficient address," presumably placed by the Postal Service when it returned the envelope to appellant.

On August 3, 1989, appellant filed yet another letter, stating as follows: "Because the lease was in the process of being assigned to me, but had not yet been recorded at the MMS (apparently), we did not have an address for them and thought they had moved. I apparently just dropped it in the mail without a complete address."

On August 9, 1989, BLM issued a decision denying appellant's request for class I reinstatement, stating:

Regulations state a terminated lease may be reinstated if the lessee demonstrates that failure to pay the rental in a timely manner was either justifiable or not due to lack of reasonable diligence on the part of the lessee. Failure to pay the rental on or before the anniversary date is justifiable where the failure is due to factors outside the lessee's control. Mailing a rental payment after it is due does not constitute reasonable diligence.

2/ It appears from a note in the record that appellant stated by telephone that she intended the \$25 overpayment filed with MMS along with her late payment of rental (totalling \$1,425) to cover the \$25 filing fee.

3/ This petition mooted the question whether her overpayment of rental by \$25 could be viewed as proper tender of the filing fee for reinstatement. See note 2, supra.

While we do recognize your circumstances and your reasons for the late payment are understandable, they unfortunately do not meet the requirements for a class I reinstatement. Therefore, your petition for reinstatement under 43 CFR 3108.2-2 (class I) is hereby denied.

Your situation does appear to qualify for a class II reinstatement if you wish to pursue that option. You have 60 days from the date you received the Certified Notice of Termination within which to file a petition for reinstatement under class II. Requirements for class II reinstatement of oil and gas lease COC 33612 were explained in our notice to you dated June 22, 1989.

BLM did not mention the incompletely addressed envelope postmarked May 31, 1989.

Taylor appealed this decision on August 24, 1989. Her appeal was not acknowledged by BLM, however, until October 19, 1989, thus delaying its docketing here. ^{4/} The appeal of the decision denying class I reinstatement was docketed here as Sybil W. Taylor, IBLA 90-51.

While that appeal was pending, on December 18, 1989, appellant filed with BLM a letter and payment in the amount of \$625 "for the fee on a class II reinstatement of this lease." On January 9, 1990, BLM issued a decision denying appellant's petition for reinstatement under class II on the basis that it was not timely filed. Appellant also filed a notice of appeal of BLM's January 9, 1990, decision, which was docketed as Sybil W. Taylor, IBLA 90-217.

[1] Section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1988), provides that, when the lessee fails to pay rental on or before the anniversary date of the lease for a 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. See also 43 CFR 3108.2-1(a). Regulations found at 43 CFR 3108.2-2(a), pertaining to reinstatement at existing rental and royalty rates (class I reinstatements), provide, in pertinent part:

(a) Except as hereinafter provided, the authorized officer may reinstate a lease which has terminated for failure to pay on or before the anniversary date the full amount of rental due, provided that:

(1) Such rental was paid or tendered within 20 days after the anniversary date;
and

^{4/} BLM is reminded of its obligation to forward casefiles to this Board within 10 days of the filing of the notice of appeal. Utah Chapter Sierra Club, 114 IBLA 172 (1990); BLM Manual 1841.15 A.

(2) It is shown to the satisfaction of the authorized officer that the failure to timely submit the full amount of the rental due was either justified or not due to a lack of reasonable diligence on the part of the lessee (reasonable diligence shall include a rental payment which is postmarked by the U.S. Postal Service * * * on or before the lease anniversary date * * *); and

(3) A petition for reinstatement, together with a nonrefundable filing fee of \$25 and the required rental * * * is filed with the proper BLM office within 60 days after receipt of Notice of Termination of lease due to late payment of rental.

In her July 6, 1989, petition to BLM, appellant stated:

The reason I am requesting this reinstatement is because I was unable to ascertain when and if the assignment to me was going to be made and if it was made, on what date it would be effective. As soon as I knew that the lease had been officially assigned to me, I sent the check for the rent to the Minerals Management Service.

As noted above, BLM approved the assignment of this interest to appellant on May 12, 1989. The record is silent as to when appellant received notification that the assignment of the interest had been approved. However, we interpret appellant's statement as indicating that, although she was unaware whether the assignment to her had been approved for some time prior to the anniversary date, she did become aware of this fact on or before May 31, 1989, the date she sent the check to MMS in the incompletely addressed envelope. This interpretation is borne out by appellant's statement of reasons, quoted below.

We are not persuaded that appellant has established entitlement to reinstatement. Appellant does not explain her assertion that she was "unable to ascertain" whether the assignment had been approved and has not shown that such inability was caused by circumstances beyond her control. Appellant admits that she knew on May 31 that the assignment had been approved, in time to make timely payment.

In her statement of reasons in IBLA 90-51, appellant states as follows:

The reason the timely envelope was misaddressed, and the normal preaddressed envelope furnished by the MMS was not used was as follows: The lease had just been reassigned to me[;] therefore the MMS did not have the lease in my name long enough to send me the usual statement and envelope. When I realized that the rent was due I wrote the check and partially addressed the envelope. I wanted to check the address, as I had a recollection that the MMS had changed its address, I put the stamped envelope down and it got mailed with an incomplete address but on time.

Again, we do not accept that appellant was unable to secure the correct MMS address in time to make the payment deadline. She has not established that she learned of the approval of the reassignment too late to make appropriate inquiries to ascertain where the rental payment should be mailed.

[2] Appellant suggests that her late payment should be excused because MMS did not have time to send her notice of rental due or other information setting out its current address. A late payment of rental may not be justified on the basis that the lessee did not receive a courtesy notice. See Monica V. Rowland, 90 IBLA 349, 352 (1986). It is well settled that a courtesy notice is merely a reminder that rental is due and reliance on the receipt of a notice does not justify a failure to pay rental timely. Id.; Melbourne Concept Project Sharing Trust, 46 IBLA 87 (1980).

[3] Appellant argues that her lease should qualify for class I reinstatement under 43 CFR 3108.2-2(a), because she attempted to mail MMS a letter containing the rental payment before the anniversary date of her lease, as evidenced by a copy of an envelope postmarked May 31, 1989, and returned to her due to insufficient address. As noted above, the envelope lacks any street address, city, state, or zip code. 5/

The provisions of 43 CFR 3108.2-2(a) recognize as reasonable diligence the mailing of rental payment on or before its due date and direct BLM to consider the postmark date in determining when the payment was mailed. Although it does not expressly so state, we view this provision as tacitly requiring that a rental payment must be timely mailed to MMS in such a manner that it has a reasonable chance of being received there. Here, where appellant mailed the payment envelope with a grossly incomplete address, the payment had no chance of being received by MMS. We cannot recognize appellant's actions as reasonable diligence in timely making her rental payment.

To hold otherwise would make a mockery of the timely filing requirement for oil and gas lease rentals. If we were to condone appellant's actions, lessees could effectively grant themselves extensions of time to make payment by taking this action, possibly repeatedly.

[4] In her June 19, 1989, letter to BLM, appellant stated that, due to two deaths in her immediate family, her appointment as administrator of these estates, a tax audit, and the fact that the lease assignment was not approved by BLM in time for MMS to send her the preaddressed envelope, she inadvertently failed to prepare her rental mailing until the day before the anniversary date. Appellant has provided copies of death certificates documenting that both her father-in-law and her mother died in near proximity to each other, in early October 1988.

5/ Appellant correctly notes that BLM disregarded this question in its decision denying reconsideration. We see no justification for BLM's failure to consider this question. However, our consideration of the point protects appellant's opportunity to have this question adjudicated.

In order to justify late payment, the circumstances outside lessee's control which have prevented timely rental payment must occur relatively near the anniversary date of the lease. Ramoco, Inc. v. Andrus, 649 F.2d 814 (10th Cir.), cert. denied, 454 U.S. 1032 (1981); see Leo M. Krenzler, 82 IBLA 205, 209 (1984); Joanne F. Bechtel, 76 IBLA 1, 2 (1983); William F. Branscome, 81 IBLA 235, 237 (1984). In the absence of proof of other extraordinary circumstances causing disruption in appellant's life, we do not view the deaths in her family almost 8 months prior to the anniversary date of the lease as proximate cause of the failure to pay timely. Furthermore, the Board has held that neither the bulk nor the complexity of an individual lessee's business constitutes adequate justification for a late payment. That is, a late payment is not justified when the lessee neglects to order his business affairs in such a fashion that his lease rental is paid on time. Leo M. Krenzler, supra at 208; see Larry W. Ferguson, 81 IBLA 167, 169 (1984). While appellants' affairs were doubtless made more numerous and complex by the unfortunate deaths of her family members and the other circumstances to which she refers, she must nevertheless bear the burden of ordering her business affairs in such a fashion that her lease rental is paid on time.

[5] Appellant has also appealed BLM's denial of her request for class II reinstatement of the lease. The Notice of Appeal, written by appellant's husband and received by BLM on February 14, 1989, states: "I am filing the notice of appeal of this decision for my wife Sybil W. Taylor. Copy to the Regional Solicitor." Appellant did not state the reasons for the appeal in this notice and has not subsequently filed any statement of reasons or explanation for her failure to do so.

Under 43 CFR 4.412(c), if the notice of appeal did not include a statement of reasons for appeal, appellant shall file such a statement with the Board within 30 days after the notice of appeal is filed. Accordingly, the statement of reasons was due by March 16, 1990.

No statement of reasons for appeal of BLM's decision denying class II reinstatement of appellant's lease was filed and no explanation has been made for the failure to do so. An appeal is subject to summary dismissal where no statement of reasons is filed within the time allowed. 43 CFR 4.402(a); 43 CFR 4.412(c). Accordingly, her appeal of BLM's denial of her petition for class II reinstatement is hereby dismissed.

Were we to reach the merits of the appeal of the class II reinstatement despite appellant's failure to file a statement of reasons, we would hold that she did not satisfy the requirements for class II reinstatement. The instructions for petitioning for class II reinstatement were set out in BLM's June 22, 1989, Notice of Termination and notified appellant that she must submit, within 60 days, a petition for reinstatement together with all back rental which has accrued from the date of termination of the lease at the rate of \$5 per acre. Appellant's failure to timely tender sufficient money to cover the amount of the back rental is an adequate basis for BLM to deny the petition for class II reinstatement. William F. Corkran, 114 IBLA 76, 81 (1990).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeals are dismissed in part, and the decisions appealed from are affirmed.

David L. Hughes
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge

120 IBLA 200