

SHELL OFFSHORE INC.

IBLA 88-453

Decided October 22, 1992

Appeal from a decision of the Director, Minerals Management Service, denying a request for a refund of royalty overpayments on Outer Continental Shelf leases. MMS-86-0439-OCS.

Affirmed.

1. Outer Continental Shelf Lands Act: Refunds

Sec. 10 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1339 (1988), authorizes the issuance of refunds for royalty overpayments only where the request for a refund is filed within 2 years of the making of the payment.

APPEARANCES: Mark B. Meyers, Esq., New Orleans, Louisiana, for appellant; Howard W. Chalker, Esq., Peter J. Schaumberg, Esq., Office of the Solicitor, Washington, D.C., for the Minerals Management Service.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

On February 26, 1982, Shell Offshore Inc. (Shell), requested a refund in the amount of \$898,479.38 for royalties paid from June 1974 through August 1981 on gas produced from six offshore leases. By letter dated December 30, 1983, this request was revised to \$897,728.05. By letter dated July 24, 1986, the Regional Manager, Houston Regional Compliance Office, Minerals Management Service (MMS), informed Shell that under section 10 of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1339 (1988), MMS was granting Shell a refund of \$89,986.15, but denying \$807,741.90 of the refund request for the stated reason that the latter amount "is barred from recovery, as it falls outside the 2-year statute of limitations specified in Section 10 of [OCSLA]." Shell appealed the Regional Manager's decision to the Director, MMS.

By decision dated March 29, 1988, the Director, MMS, ruled that under this Board's opinion in Shell Offshore, Inc., 96 IBLA 149, 94 I.D. 69 (1987), Shell's "request for a refund of royalties paid to the United States prior to February 26, 1980 (\$807,741.90) is clearly barred by section 10 of the OCSLA" (Decision at 5). In Shell Offshore, the Board ruled that "a right to a refund must be asserted within 2 years of the

date of payment." 96 IBLA at 166, 94 I.D. at 79. On May 4, 1988, Shell appealed the decision of the Director, MMS, to this Board.

By order dated July 24, 1989, the United States Claims Court reversed the Board's decision in Shell Offshore, ruling that the 2-year "statute of limitations" embodied in section 10 of OCSLA began to run when the lessee made an excess payment, which event occurred, at the earliest, after the adjudication of Interstate Natural Gas Ass'n of America (INGAA) v. Federal Energy Regulatory Commission (FERC), 716 F.2d 1 (D.C. Cir. 1983), cert. denied, 465 U.S. 1108 (1984). Chevron U.S.A., Inc. v. United States, 17 Cl. Ct. 537 (1989).

In its statement of reasons for appeal, Shell had contended that a July 2, 1981, ruling by FERC in In Re: South Texas Natural Gas Gathering Co., Docket No. GP79-88, was pertinent because, as a result of it, Shell determined it had been overpaying gas royalties on the six leases from June 1974 through July 1981. Shell asserted that its request for refund came within 2 years after that FERC decision.

In an order dated January 17, 1990, we suspended consideration of this appeal pending the outcome of the Chevron litigation and directed the parties to file briefs within 60 days of resolution of that litigation. <sup>1/</sup> The United States Court of Appeals for the Federal Circuit reversed the Claims Court decision and affirmed the Board's Shell Offshore decision. Chevron U.S.A., Inc. v. United States, 923 F.2d 830 (1991), cert. denied sub nom., Phillips Petroleum Co. v. United States, \_\_\_ U.S. \_\_\_, 112 S. Ct. 167 (1991).

On February 12, 1992, following the passage of the time granted in our January 17, 1990, order for filing briefs, the Board extended to the parties additional time in which to file. Shell filed a pleading and MMS filed a response.

In its pleading, Shell seeks to distinguish the Federal Circuit's Chevron decision, arguing that it did not hold that in all cases claims for refund accrue on the date of royalty payment. Shell points to language

---

<sup>1/</sup> In the order we also noted that Shell had argued that it should be allowed to offset royalty overpayments against royalty underpayments, if it was finally determined that it made underpayments. In a partial motion to dismiss filed by MMS, it had asserted that the issue of offsets was not decided by the Director. It contended that the Director specifically declined to rule on the issue of offsets when he stated that "a possible offset of alleged overpayments should be evaluated on its merits if and when MMS pursues collection" (Decision at 5). In the order we took that partial motion to dismiss under advisement pending our consideration of the merits of Shell's appeal. We agree with MMS that the issue of offsets is not presented in this appeal.

in the court's opinion that "the statute commences to run when claimants know or should have known of their potential claims." 923 F.2d at 834. Shell also asserts that the facts in this case are different than in Chevron because at no time from the time royalty payments were made in 1974 until it had analyzed the 1981 FERC rulings did it know or should it have known that it had overpaid royalties.

MMS responds that Chevron is applicable to and controlling of the disposition of this case. It points out that the language cited by Shell and quoted above is contained in a paragraph in which the court was discussing statutes of limitations, not section 10 of OCSLA, 43 U.S.C. § 1339 (1988). It asserts that the Chevron court clearly held that the requirements of section 10 cannot be met and a refund cannot be granted unless a request for refund is filed within 2 years of making the payment.

[1] The relevant statutory provision, section 10 of OCSLA, provides in pertinent part:

[W]hen it appears to the satisfaction of the Secretary that any person has made a payment to the United States in connection with any lease under this subchapter in excess of the amount he was lawfully required to pay, such excess shall be repaid without interest to such person or his legal representative, if a request for repayment of such excess is filed with the Secretary within two years after making of the payment \* \* \*.

43 U.S.C. § 1339(a) (1988).

The Circuit Court construed the phrase "within two years after making the payment," as follows:

By its terms, this phrase requires a request within two years from the time a lessee makes its original payment.

The context of this phrase underscores its clear meaning. The statute does not use the phrase "making of the payment" solely to condition a refund upon a timely request. Rather, the phrase--in a slightly different grammatical form--also appears in an introductory clause: "when it appears . . . that any person has made a payment to the United States in connection with any lease under this subchapter . . . ." 43 U.S.C. § 1339(a) (emphasis added). Thus, the "payment" phrase defining timely requests refers to the original excessive royalty payment. This context further links the refund request to the original royalty payment.

\* \* \* In the case at bar, appellees first requested a refund more than two years after making excessive payments. Therefore, the statute barred any refund. The statute did not authorize the Secretary of Interior (Secretary) to pay, nor appellees to receive, any refund requested past the two-year limit.

The statute does not state that a lessee must request a refund "within two years after discovery that a payment was excessive." Nor does the statute state that a lessee must request a refund "within two years of a judicial determination rendering a payment excessive." The statute requires a request "within two years after the making of a payment." By interpreting the OCSLA otherwise, the Claims Court erred.

923 F.2d at 833.

The court's language cited by Shell, in support of its position, is lifted out of context. That language was directed to statutes of limitation, which the court noted, technically, section 10 was not. It found that under OCSLA, an overpayment gives rise to a claim and there is no condition on eligibility for a refund except that a request be made within 2 years of an excess payment. Therefore, it concluded that "claims for refunds accrue on the date of the payment." 923 F.2d at 834.

Shell's attempts to distinguish the court's decision in Chevron must be rejected. MMS is clearly correct in its interpretation of the court's decision.

Moreover, this has been the consistent position of this Board, even following the Claims Court reversal of our Shell Offshore decision. According, the Board pointed out the error of the Claims Court in 1990:

In Chevron and in this appeal, however, while the ultimate success of a claim may not yet have been determined, the right to sue arose upon the making of the overpayment. Essentially, the Claims Court substituted the payor's subjective knowledge that it had made an overpayment in place of the accrual of the right to seek a refund for an excess payment. But the right to seek a refund accrues upon the making of any payment, and this right accrues independent of any knowledge that an excess payment has occurred. [Emphasis in original.]

Conoco Inc., 114 IBLA 28, 34 (1990). 2/

Therefore, we conclude that under OCSLA refunds for royalty overpayments are only authorized where the request for a refund is filed within 2 years of the making of the payment and claims for refunds accrue on the date of payment. Hamilton Brothers Oil Co., 123 IBLA 229 (1992).

---

2/ The court recognized this error when it stated: "[T]he Claims Court erred by measuring the two-year limitation from the issuance of the INGAA ruling. The D.C. Circuit's ruling simply does not constitute 'the making of [a] payment.'" 923 F.2d at 834.

Therefore, 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.

---

Bruce R. Harris  
Deputy Chief Administrative Judge

I concur:

---

David L. Hughes  
Administrative Judge