

BEFORE THE
OIL AND GAS BOARD OF REVIEW
STATE OF OHIO

Edmund C. Gallenz,
Appellant,

vs.

Appeal No. 28

Andrew G. Skalkos, Chief
Division of Oil and Gas,
Appellee.

APPEARANCES: For Appellant:
For Appellee:

None

William J. Brown
Attorney General of the
State of Ohio by Mr.
Stephen P. Samuels
Assistant Attorney General
30 East Broad Street
Columbus, Ohio 43215

ENTRY

I. Background

This matter came for hearing before the Oil and Gas Board of Review on January 23, 1981 at 1:30 p.m. at Fountain Square Building C, Columbus, Ohio.

Adjudication Order No. 273 orders Edmund C. Gallenz, his heirs, successors or assigns, to plug properly and abandon three wells known as the Ollie Ranga Nos. 4, 5a and 6. The wells in question are located in Bath Township, Allen County, Ohio. Mr. Gallenz is the assignee of the oil and gas lease upon which the wells are located.

The record indicates that Adjudication Order No. 273, dated September 11, 1980 was properly issued by Andrew G. Skalkos, as Chief, of the Division of Oil and Gas of the Department of Natural Resources ("the Division") and was properly transmitted to Mr. Gallenz by certified mail. Mr. Gallenz responded to the Order by a letter to the Chief dated October 7, 1980. While the letter indicates that the Order "was sent to me in error" it does specify that:

If there is any question concerning this matter we hereby request a hearing before the Board of Review at such time as convenient [sic] for all concerned parties.

On October 21, 1980, Mimi A. Roberts, Legal Advisor to the Division of Oil and Gas, responded by certified mail to Mr. Gallenz's letter and advised Mr. Gallenz of the procedure to be followed to file an appeal from an Adjudication Order. The letter also indicated that if proper notice of an appeal was not received within seven days "it will be conclusively presumed that no appeal has been taken...".

Mr. Gallenz acknowledged receipt of same on October 22, 1980. He then filed a formal Notice of Appeal, which he personally signed. It bears no date other than the October 30, 1980 receipt stamp of the Division.

Mr. Gallenz was notified by the Secretary of the Board by letter dated November 23, 1980 that his appeal was set for hearing December 12, 1980. The letter was returned unclaimed. Mr. Gallenz sent a letter on November 23, 1980 indicating he could not prepare his case until February or March, 1981. The Board voted to deny a further extension at that time. On December 15, 1980 the Board notified Mr. Gallenz that his hearing had been reset for January 23, 1981. Mr. Gallenz signed receipt for this letter December 18, 1980. On January 22, 1981 the Board's Secretary received a letter from Mr. Gallenz indicating he was ill and unable to attend the next day's hearing. The Board convened the hearing on the scheduled date.

The procedure to appeal an order by the Chief is set forth in Section 1509.36, Revised Code. In pertinent part the statute requires:

Such appeal shall be in writing and shall set forth the order complained of and the grounds upon which the appeal is based. Such appeal shall be filed with the board within thirty days after the date upon which appellant received notice by registered mail of the making of the order complained of. Notice of the filing of such appeal shall be filed with the chief within three days after the appeal is filed with the board.

Mr. Gallenz's October 6, 1980 letter was received by the Division in the requisite thirty days. Though it did request a hearing it is arguable whether the content of the letter was sufficient to set forth the grounds upon which an appeal could be based. Mr. Gallenz's Notice of Appeal, legally sufficient in content, was nevertheless filed beyond the thirty day limitation period.

Without deciding the question as to whether Mr. Gallenz's efforts perfected his right of appeal, the Board set the matter for hearing. After two continuances, requested by Mr. Gallenz, the matter came for hearing. Neither Mr. Gallenz nor anyone representing Mr. Gallenz's interests came forward at the hearing.

The Chief, through counsel, moved to dismiss the appeal and affirm the order, based on Mr. Gallenz's failure to appear. The Board took the motion under advisement and requested the Chief to present his case.

II. Legal Discussion

It is well-settled doctrine of law that the appealing party has the burden of proof. See 2 O Jur 3d, 264. Other Ohio administrative agencies with similar appellate boards of review have embodied this principle. See e.g. Truck World, Inc. v. McAvoy, Case No. EBR 80-3 (June 10, 1980). This Board also should be so governed.

In addition to sound legal reasons why an appellant should bear the burden of proof, there is a practical one. To permit the recipients of adjudication orders to file notices of appeal and not proceed further would disrupt the entire appeal process. It would not only be a waste of time, but also a potential device of circumventing the system.

Since Mr. Gallenz failed to present a case at the hearing the Board can rely upon the decision reached by the Chief. There is no further obligation by the Board to proceed further.

III. Conclusion

This Board now determines that an adjudication order of the Chief will be upheld if an appellant fails to be present at the scheduled hearing. This does not mean that the Board will not grant continuances for good cause shown, but only that once an agreed upon hearing date is established, an appellant must appear or be represented.

Based upon the facts and the applicable law the Board finds that Adjudication Order No. 273 was lawful and reasonable; and

ORDERS that Adjudication Order No. 273 be and it is hereby AFFIRMED.

This Order effective this 6th day of October, 1982.

OIL AND GAS BOARD OF REVIEW

/S/ James J. Morgan
James J. Morgan, Chairman

/S/ George M. Hauswirth
George M. Hauswirth, Secretary

/S/ Robert H. Alexander
Robert H. Alexander

/S/ Lance W. Schneier
Lance W. Schneier