

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1331 PENNSYLVANIA AVENUE, NW, SUITE 520N
WASHINGTON, D.C. 20004-1710

FEB 21 2017

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

PORTABLE, INC.

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Docket No. EAJA 2015-1-M

BEFORE: Althen, Acting Chairman; Jordan, Young, and Cohen, Commissioners


ORDER OF DISMISSAL

BY THE COMMISSION:

This proceeding involves an application for an award of attorney's fees and expenses under the Equal Access to Justice Act ("EAJA"). 5 U.S.C. § 504. Portable, Inc., prevailed over the Department of Labor's Mine Safety and Health Administration in a penalty proceeding under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012). The Commission Administrative Law Judge vacated the citation at issue. 36 FMSHRC 3249 (Dec. 2014) (ALJ). Portable then filed an EAJA application on the ground that the Secretary of Labor's position was not substantially justified. The Judge held that the Secretary's position was not substantially justified and granted the \$62,217.82 award requested in the application. 37 FMSHRC 1405 (July 2015) (ALJ). The Secretary filed a petition for discretionary review, which the Commission granted.

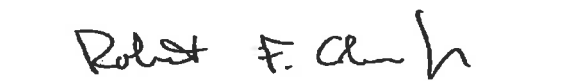
The Secretary and Portable have filed a joint motion to dismiss notifying the Commission that the parties have reached a complete resolution of this matter through settlement. *See* 29 C.F.R. § 2704.305.

Upon consideration of the settlement and joint motion filed by the parties, the motion is **GRANTED** and this proceeding is **DISMISSED**.


William I. Althen, Acting Chairman


Mary Lu Jordan, Commissioner


Michael G. Young, Commissioner


Robert F. Cohen, Commissioner

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