

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710
TELEPHONE: 202-434-9956 / FAX: 202-434-9949

January 30, 2017

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION, on behalf of
STEVE GLOSSON,
Complainant,

v.

LOPKE QUARRIES, INC.,
Respondent.

DISCRIMINATION PROCEEDING

Docket No. SE 2017-19-DM
MSHA Case No. SE-MD-16-09

Mine: Dunn Construction
Mine ID: 01-03411

ORDER COMPELLING PRODUCTION OF DOCUMENTS
ORDER DENYING REQUEST TO POSTPONE HEARING

This proceeding is before me upon a complaint of discrimination under section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 815(c)(2). A hearing is scheduled for February 28 to March 1, 2017. The Secretary has filed a motion to compel responses to the Secretary's Requests for Production of Documents and a motion to postpone the hearing.

The Secretary's motion sets forth the following timeline of events that have occurred during discovery.

On December 6, 2016, the Secretary served discovery requests on Respondent Lopke Quarries, Inc. ("Lopke"). Lopke's responses were due on January 3, 2017. Lopke requested and received an extension of time until January 6 to respond. On that date, Lopke responded to the Secretary's Requests for Admissions but failed to respond to the Secretary's Interrogatories or Requests for Production.

During a phone call on January 12, Lopke's counsel agreed to provide the outstanding discovery responses by January 13 in order to allow the Secretary time to prepare for depositions scheduled for January 25. On January 13, Lopke failed to provide discovery responses. On January 16, Lopke provided incomplete discovery responses. The specific deficiencies identified by the Secretary are that Lopke failed to respond to six of the interrogatories and, in response to the Requests for Production, submitted unnumbered documents without indicating to which Requests they were responsive. Sec'y Mot., Ex. G.

During a phone call on January 18, Lopke's counsel agreed to postpone the scheduled depositions and provide complete discovery responses by January 20. On January 20, Lopke failed to provide discovery responses. On January 23, Lopke again provided incomplete

responses to the Requests for Production and failed to provide any supplemental interrogatory responses. Sec’y Mot., Ex. I. On January 25, Lopke’s counsel provided supplemental interrogatory responses and sent a series of emails with documents attached, but failed to indicate to which requests the documents were responsive. Sec’y Mot., Exs. L, M. Moreover, the Secretary alleges that none of the documents appear to be responsive to his specific request for service records for loaders the Complainant operated while working at the mine. The Secretary asserts that these records are relevant to Lopke’s allegations that Complainant was unwilling to safely operate the loaders to which he was assigned and intentionally damaged the brakes on one of them.

On January 26, the Secretary filed a motion seeking to compel Lopke to “respond fully to the discovery properly served in this case.” The Secretary asserts he is entitled to reasonable development of evidence in support of his case pursuant to Commission Procedural Rule 56. 29 C.F.R. § 2700.56. Lopke’s failure to provide full and complete discovery responses has prevented the Secretary from adequately preparing for trial or depositions or from fully identifying Rule 30(b)(6) deposition topics.¹ The Secretary’s motion also requests that the hearing be postponed to April 18-19, 2017 so that he will have time to adequately prepare for and take depositions.

Counsel for Lopke emailed my office on Friday, January 27, stating that she would file a response to the Secretary’s motion “as soon as possible today.” However, my office did not receive a response that day. This morning (January 30), counsel emailed my office again, stating, “The Respondent will be filing a motion in opposition today.”

Although I have not yet received Lopke’s response, this matter requires expeditious resolution because the Secretary has been waiting several months for opposing counsel to provide the information necessary to allow him to prepare for depositions and trial. The specific documents identified by the Secretary that Lopke has not yet produced are the complete service records for the loaders Complainant operated while at the mine. Lopke is hereby **ORDERED to produce to the Secretary labeled copies of the service records for the loaders by close of business today, January 30, 2017.** In addition, **Lopke shall immediately make available any witnesses the Secretary needs to depose.**

The hearing is scheduled to begin four weeks from now, on February 28, 2017. Provided that Lopke responds to the Secretary’s discovery and makes its witnesses available immediately, the parties still have sufficient time to take depositions. Accordingly, the Secretary’s request to postpone the hearing is **DENIED.**

¹ Rule 30(b)(6) of the Federal Rules of Civil Procedure permits a party to name a business organization as a deponent and requires the named organization to then designate one or more officers, directors, managing agents, or other persons to testify on its behalf. Fed. R. Civ. Pro. 30(b)(6); *see* 29 C.F.R. § 2700.1(b) (applying Federal Rules to this proceeding).

Because Lopke has delayed discovery and the taking of depositions, the due date for the close of discovery and for the parties to file copies of their witness lists and exhibits is hereby extended to **February 14, 2017**.

A handwritten signature in black ink, appearing to read "Priscilla M. Rae". The signature is fluid and cursive, with the first name being the most prominent.

Priscilla M. Rae
Administrative Law Judge

Distribution:

Melanie A. Stratton, Esq., Office of the Solicitor, U.S. Department of Labor, 61 Forsyth Street SW, Room 7T10, Atlanta, GA 30303

Steve Glosson, 226 Creel Loop, Brierfield, AL 35035

Diana R. Schroeder, Esq. & Adele L. Abrams, Esq., Law Office of Adele L. Abrams, P.C., 4740 Corridor Place, Suite D, Beltsville, MD 20705