

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Office of Administrative Law Judges
1331 Pennsylvania Avenue, N.W., Suite 520N
Washington, D.C. 20004

February 14, 2023

CACTUS CANYON QUARRIES, INC.	:	CONTEST PROCEEDING
Contestant,	:	
	:	Docket No. CENT 2023-0068-RM
v.	:	E-Document No. 3122645; 08/11/2022
	:	
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Fairland Plant & Qys
ADMINISTRATION (MSHA),	:	Mine ID 41-00009
Respondent.	:	

ORDER OF DISMISSAL

This case involves a mine operator in Texas seeking an order from the Commission that would force MSHA to act on its applications for mine identification numbers (“Mine IDs”). The Secretary of Labor argues that the Commission lacks jurisdiction. After my consideration of the entire record, I agree with the Secretary that I have no jurisdiction over this matter.

Procedural Background

This matter is before me after Cactus Canyon Quarries, Inc. (“CCQI”) through counsel filed a document on November 15, 2022, with the caption “Civil Proceeding to Perform Ministerial Act of Assigning Mine ID” and titled “Contest Proceeding, 30 U.S.C. § 815(d), 29 C.F.R. § 2700.20.” In its filing CCQI argues that MSHA failed to assign Mine IDs for several of CCQI’s intermittent surface mines, and thus CCQI petitions the Commission to require MSHA “to perform the ministerial act of assigning a mine ID to the 10 captioned min[e]s as required by 30 U.S.C. § 803 and MSHA Form 7000-51.” (Doc. at 1–2.) CCQI attached four exhibits which contain correspondence with MSHA and copies of forms it submitted to MSHA requesting Mine IDs. (Doc., Exs. 1–4.)

The Commission’s docket office processed the document as a contest proceeding under section 105 of the Federal Mine Safety and Health Act of 1977 (“Mine Act”), 30 U.S.C. § 815, and assigned the matter a docket number on January 5, 2023. Thereafter, the Secretary of Labor filed his Motion to Dismiss on January 12, 2023, claiming the Commission should dismiss this case for lack of jurisdiction. (Mot. at 1.) Specifically, the Secretary argues that “[n]othing in the Mine Act gives the Commission . . . authority to compel MSHA to issue Mine IDs,” and that the Commission is not a court of general jurisdiction. (Mot. at 2.) Thereafter, on January 13, 2023, Chief Administrative Law Judge Glynn F. Voisin assigned me this docket.

On January 18, 2023, the Operator filed a document titled “Supplement to Contest Proceeding, 30 U.S.C. § 815(d), 29 C.F.R. § 2700.20, Notice of Inaccurate and Misleading

Caption,” which was not a direct response to the Secretary’s motion but an attempt by CCQI to provide additional information and grounds regarding its initial filing by attaching five additional exhibits including emails and other correspondence. (Suppl. Doc., Exs. 5–9.) Nevertheless, I waited ten days for the operator to file a formal response to the Secretary’s motion per Commission Procedural Rule 10, 29 C.F.R. § 2700.10, but received nothing further.

Jurisdiction Under the Mine Act

Although CCQI titles both its initial filing and its supplemental filing a “Contest Proceeding,” neither filing is a contest of any citation or order issued by MSHA under section 104 of the Mine Act, 30 U.S.C. § 814. Indeed, Commission Procedural Rule 20 is titled “Notice of contest of a citation or order issued under section 104 of the Act” and specifically lists what mine operators may contest before the Commission. Under Commission Procedural Rule 20(a)(1)—

- (1) An operator may contest:
 - (i) A citation or an order issued under section 104 of the Act, 30 U.S.C. 814;
 - (ii) A modification of a citation or an order issued under section 104 of the Act; and
 - (iii) The reasonableness of the length of time fixed for abatement in a citation or modification thereof issued under section 104 of the Act.

29 C.F.R. § 2700.20(a)(1). The Commission’s rule tracks with section 105(d) of the Mine Act noting, in relevant part, those matters that may come before the Commission:

If, within 30 days of receipt thereof, an operator of a coal or other mine notifies the Secretary that he intends to contest the issuance or modification of an order issued under section 814 of this title, or citation or a notification of proposed assessment of a penalty issued under subsection (a) or (b) of this section, or the reasonableness of the length of abatement time fixed in a citation or modification thereof issued under section 814 of this title, . . . the Secretary shall immediately advise the Commission of such notification, and the Commission shall afford an opportunity for a hearing

30 U.S.C. § 805(d). Though not applicable in this case, section 105(c) gives Commission Judges jurisdiction over claims of discrimination and interference, and section 107(e) gives operators an opportunity for a hearing to contest imminent danger orders. 30 U.S.C. §§ 815(c), 817(e).

Analysis

Both CCQI’s initial and supplemental filings list ten electronic document numbers generated by MSHA whenever a mine operator electronically submits Form 7000-51 to request a

Mine ID. In the caption of its filings, CCQI lists the document numbers of the ten named mines for which it seeks (or previously sought) Mine IDs. Only one of the ten listed mines received a Mine ID. (Suppl. Doc. at 4.) In neither filing does CCQI contest a citation or order issued by MSHA under section 104. Neither does CCQI contest a modification or the time for abatement of a citation or order issued under section 104. Section 104, 30 U.S.C. § 814, refers to citations or orders issued by an authorized representative (“AR”) of the Secretary (MSHA inspector) to mine operators for violations of mandatory health or safety standards. CCQI’s claims regarding the approval of Mine IDs do not entail the issuance of a citation or order for violations of mandatory health or safety standards, and thus do not come under this section of the Mine Act. Indeed, CCQI cites to no case law to support its contention. Therefore, I determine CCQI has not brought a valid notice of contest under Commission Procedural Rule 20, 29 C.F.R. § 2700.20, or section 105(d) of the Mine Act, 30 U.S.C. § 815(d).¹

Moreover, CCQI’s arguments and citations to the Mine Act are confusing and misplaced. In its supplemental submission CCQI attempts to justify its filings with the Commission by citing the entire Mine Act “including without limitation §802, §803, §815(d), and §823(d).” (Suppl. Doc. at 1.) Despite this broad approach, CCQI fails to cite to any provision in the Mine Act that would give the Commission jurisdiction to hear a matter involving the issuance of Mine IDs. For instance, section 3 of the Mine Act, 30 U.S.C. § 802, is simply a list of statutory definitions and section 4, 30 U.S.C. § 803, refers to mines subject to the Mine Act. As discussed above, section 105(d), 30 U.S.C. § 815(d), does not confer jurisdiction over matters of issuing Mine IDs but refers to contests of citations and orders issued to mine operators for violations of safety and health standards. Finally, section 113, 30 U.S.C. § 823(d), simply discusses the structure of the Commission and the role of its administrative law judges and does not confer general jurisdiction to hear any matter related to the Mine Act. None of the sections of the Mine Act specifically cited by CCQI confer jurisdiction on me to hear matters involving Mine IDs, and I am unaware of any other sections that would do so. Nor can CCQI point to any of the Commission’s procedural rules that would provide an avenue for instituting such a proceeding.

Consequently, I must address the Secretary’s motion to dismiss for lack of jurisdiction. Commission Procedural Rule 1(b) states: “On any procedural question not regulated by the Act, these Procedural Rules, or the Administrative Procedure Act (particularly 5 U.S.C. 554 and 556), the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure.” 29 C.F.R. § 2700.1(b). Here, I am guided by Rule 12(b)(1) of the Federal Rules of Civil Procedure on motions to dismiss for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Because I conclude that I do not have subject matter jurisdiction to review CCQI’s matter involving the issuance of Mine IDs, this case

¹ In its supplemental submission, CCQI attaches a copy of Citation No. 9678444 issued on October 26, 2022, to CCQI at Fairland Plant & Qys (Mine ID 41-00009), and correspondence with MSHA about the non-issuance of Mine IDs to CCQI. (Suppl. Doc., Ex. 8.) Under Commission Procedural Rule 20(b), an operator must file a contest of a citation within thirty days of issuance of the citation. 29 C.F.R. § 2700.20(b). CCQI did not formally contest this citation. Yet, even if I were to construe the supplemental submission as the contest of a citation issued under section 104, CCQI failed to submit a contest of Citation No. 9678444 within thirty days of its issuance on October 26, 2022, and as such it would be dismissed as untimely.

must be dismissed. *See Star Mine Operations, LLC*, 36 FMSHRC 3326, 3327 (Dec. 2014) (ALJ) (dismissing a case pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction).

WHEREFORE, it is hereby **ORDERED** that Docket No. CENT 2023-0068-RM is **DISMISSED** with prejudice for lack of subject matter jurisdiction.

A handwritten signature in black ink that reads "Alan G. Paez". The signature is written in a cursive, flowing style.

Alan G. Paez
Administrative Law Judge

Distribution: (Via Electronic Mail & U.S. Mail)

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