

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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APR 24 2019

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket Nos. SE 2016-218
	:	SE 2016-219
v.	:	SE 2016-246
	:	
JONES BROTHERS, INC.	:	

BEFORE: Jordan, Young, Althen, and Traynor, Commissioners¹

ORDER

BY THE COMMISSION:

These consolidated contest and civil penalty proceedings arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”). After nine citations and orders were issued to Jones Brothers, Inc. by the Department of Labor’s Mine Safety and Health Administration, a Judge found that the operations of the company were subject to the Mine Act. 39 FMSHRC 399 (Feb. 2017) (ALJ). The parties then moved for a final order so that an appeal on the jurisdiction issue could be pursued, whereupon the Judge granted the motion, affirmed the citations and orders, and assessed penalties. 39 FMSHRC 570 (Mar. 2017) (ALJ).

The Commission did not grant Jones Brothers’ petition for discretionary review, but subsequently the company successfully appealed to the United States Court of Appeals for the Sixth Circuit. That court vacated the decisions below, ruling that at the time of the Judge’s decisions, she was an inferior officer of the United States who had not been appointed in accordance with Article II, Section 2, Clause 2 of the Constitution.² *Jones Bros., Inc. v. Sec’y of Labor*, 898 F.3d 669, 679 (6th Cir. 2018) (following *Lucia v. SEC*, ___ U.S. ___, 138 S. Ct.

¹ Chairman Marco M. Rajkovich, Jr. is recused in this matter.

² Known as “the Appointments Clause,” it reads:

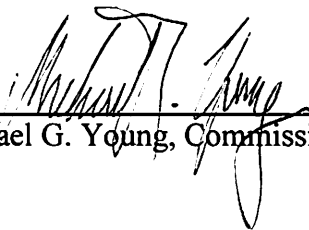
[the President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior

2044, 2050 (2018). While recognizing that subsequent to her decisions the Commission had cured the defect in the Judge’s appointment, the court nonetheless held:

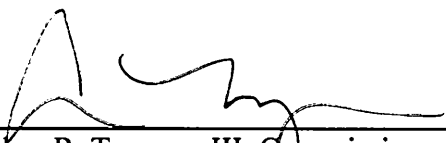
Jones Brothers is entitled to a new hearing before a constitutionally appointed administrative law judge. And even if [the] Judge [here] has since received a constitutional appointment, that hearing must be before a new official. [The] Judge [here] “issued an initial decision on the merits [and] cannot be expected to consider the matter as though [she] had not adjudicated it before.”

Id. (quoting *Lucia*, 138 S. Ct. at 2055). Accordingly we remand this matter to the Acting Chief Administrative Law Judge for assignment to a different Judge to conduct further proceedings consistent with the court’s instructions.


Mary Lu Jordan, Commissioner


Michael G. Young, Commissioner


William I. Althen, Commissioner


Arthur R. Traynor, III, Commissioner

Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

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