

CCASE:
SOL (MSHA) v. CLIMAX MOLYBDENUM
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Federal Mine Safty and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
ON BEHALF OF
JEFFREY S. HOTCHKISS,

COMPLAINANT
v.

COMPLAINT OF DISCHARGE
DISCRIMINATION OR INTERFERENCE

DOCKET NO. WEST 81-130-DM

MINE: Climax Mine

CLIMAX MOLYBDENUM COMPANY,
RESPONDENT

ORDER OF DISMISSAL

The Secretary of Labor has moved to withdraw his complaint of discrimination filed on behalf of Jeffrey S. Hotchkiss. Withdrawal is sought on the grounds that insufficient evidence exists to continue prosecution. Mr. Hotchkiss has filed a formal consent to the withdrawal of the complaint. Respondent does not oppose the motion.

The Secretary's motion is granted, and this present proceeding is dismissed with prejudice.

The Secretary's motion and the miner's accompanying consent, however, are silent as to whether the dismissal should foreclose the miner's right to prosecute his own complaint under section 105(c)(3) of the Act. The Secretary's determination to withdraw can stand no differently than an initial determination not to file a complaint; it cannot deprive the miner of his right to initiate his own complaint.(FOOTNOTE.1) Because there has been no affirmative waiver of that right, Mr. Hotchkiss is granted 30 days from his receipt of this order in which to file his own complaint with the Commission, should he wish to do so.

SO ORDERED.

John A. Carlson
Administrative Law Judge

AA

~FOOTNOTE_ONE

Cf. S. Rep. No. 95-181 95th Cong. 1st Sess. at 37 (1977); reprinted in Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong., 2d Sess. Legislative History of the Federal Mine Safety and Health Act of 1977 at 626 (1978).