

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

333 W. COLFAX AVENUE, SUITE 400
DENVER, COLORADO 80204

JUL 23 1981

_____)	
JOHN F. MONAHAN,)	
	Complainant,)	COMPLAINT OF DISCHARGE,
)	DISCRIMINATION OR INTERFERENCE
	v .)	DOCKET NO. WEST 81-196-DM
)	
EXXON MINERALS COMPANY,)	MSHA CASE NO. 81-11
)	
	Respondent.)	
_____)	

ORDER

On June 8, 1981, respondent filed a motion to dismiss. As grounds therefor, respondent states that complainant's employment with the respondent was terminated on February 14, 1980. It was not until October 13, 1980, nearly eight months later, that complainant filed a complaint with the Secretary alleging that his discharge was in violation of Section 105(c)(1) of the Federal Mine Safety and Health Act of 1977.

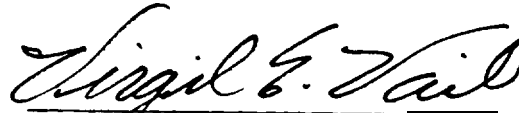
Section 105(c)(1) provides that any miner who believes he has been discriminated against, "may, within 60 days after such violation occurs, file a complaint with the Secretary alleging such discrimination." 30 U.S.C. § 815(c)(2). It has been held that, "none of the filing deadlines are jurisdictional in nature. Rather, they are analogous to statutes of limitation; which may be waived for equitable reasons." Secretary of Labor, on behalf of Gary M. Bennett v. Kaiser Aluminum and Chemical Corporation, CENT 81-35-DM (June 15, 1981). See also Christian v. South Hopkins Coal Co., 1 FMSHRC 126 (1979).

Complainant does not deny the delay in filing his complaint with the Secretary. Rather, complainant states that the delay was due to personal problems such as finding other employment and obtaining a divorce. Complainant's Reply, filed June 22, 1981.

I find that the explanations given by the complainant for the delay do not constitute "equitable reasons." The personal reasons listed by the complainant should not be considered justification for such a lengthy delay.

The delay in the filing of the complaint makes it difficult for the respondent to obtain evidence because of the passage of time, and to force the respondent to defend itself in a suit after such a long period would be unjust.

Therefore, respondent's motion to dismiss is hereby GRANTED and the case DISMISSED.


Virgil E. Vail
Administrative Law Judge

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