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RAYMOND V. EASTERN COAL
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

RAYMOND FARMER,
COMPLAINANT

COMPLAINT OF DISCRIMINATION,
DISCHARGE, OR INTERFERENCE

v.

Docket No. WEVA 82-135-D
HOPE CD 82-7

EASTERN ASSOCIATED COAL
CORPORATION,
RESPONDENT

Wharton No. 4 Mine

DECISION

Appearances: Raymond Farmer, Big Creek, West Virginia, pro se;
Mark C. Russell, Esq., Jackson, Kelly, Holt and O'Farrell,
Charleston, West Virginia, for Respondent

Before: Judge Melick

This case is before me upon the complaint of Raymond Farmer under section 105(c)(3) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act," alleging that the Eastern Associated Coal Corporation (Eastern) discriminated against him on September 23, 1981, presumably in violation of section 105(c)(1) of the Act. (FOOTNOTE 1) He seeks one million dollars in damages. Evidentiary hearings were held on Mr. Farmer's complaint in Charleston, West Virginia.

In order to establish a prima facie violation of section 105(c)(1) of the Act, Mr. Farmer must prove by a preponderance of the evidence that he has engaged in an activity protected by that section and that he has suffered discrimination or interference which was motivated in any part by that protected

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activity. Secretary, ex rel David Pasula v. Consolidation Coal Co., 2 FMSHRC 276 (1980), rev'd on other grounds, Consolidation Coal Co. v. Secretary, 663 F. 2d 1211 (3rd Cir., 1981).

Mr. Farmer complains herein that the mine operator discriminated against him by failing to immediately call an ambulance upon his representations that he had suffered chest pains and could not continue working. More specifically, Farmer complains that 1 1/4 to 1 1/2 hours had elapsed between his first complaint to the operator and the arrival of an ambulance. He is unable, however, to cite any precipitating protected activity in which he had been engaged that caused the alleged discrimination. Under the circumstances, even assuming there was in fact evidence of discrimination as alleged, Mr. Farmer has failed to show that it was within the scope of section 105(c)(1).

Even if Mr. Farmer's complaint of a sudden onset of a physical impairment could in itself be considered a protected refusal to work as resulting from a good faith reasonable belief that continuing to work would involve safety hazards, there is insufficient evidence in this case of any proscribed retaliation, discrimination, or interference against Mr. Farmer. Pasula, supra; Secretary, ex rel Robinette v. United Castle Coal Co., 3 FMSHRC 803 (1981); Bradley v. Belva Coal Co., 4 FMSHRC 982 (1982).

The evidence shows that around 6:20 on the morning of September 23, 1981, mine foreman Robert Jarrell was called over the "trolley phone" and told by the dispatcher that both motor crews, consisting of four miners (including the Complainant), had reported "sick" and wanted a ride outside the mine. When Jarrell reached the purportedly sick miners, one, Ernie White, said that he had something in his eye and another, Herman Wagoner, complained that he had the flu. Mr. Farmer complained that he was beginning to have "chest pains", that his "chest felt like a heavy weight was against it", and that his left arm hurt. The fourth miner apparently changed his mind about being "sick" and decided to go ahead and work. Jarrell apparently became angry at what appeared to be flimsy excuses to get out of work and to close down the section. It is not disputed that Jarrell nevertheless took the three "sick" miners out of the mine in his jeep and that someone called an ambulance.

The accident report based on information furnished by Mr. Farmer establishes the time of occurrence at 6:20 a.m. The records of the Boone County ambulance authority indicate that someone from the mine called at 6:30 that morning, that an ambulance was dispatched six minutes later, and that it arrived at the mine at 7:00 that morning. The records further indicate that the ambulance was enroute to the hospital at 7:10 a.m. and arrived at Boone Memorial Hospital at 7:37 a.m. with Farmer. Farmer was admitted for observation and claims that he was told he had a "light heart attack". No medical evidence has been submitted to corroborate his claims.

Within this framework of evidence, I cannot find that

Eastern denied or impeded Mr. Farmer's access to an ambulance or to other appropriate medical services. I observe, moreover, that Mr. Farmer conceded at hearing that if indeed there was truly a medical emergency, there was nothing to prevent him

