

CCASE:
JOHNNIE JACKSON V. TURNER BROS.
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

JOHNNIE LEE JACKSON,
COMPLAINANT

DISCRIMINATION PROCEEDING

v.

Docket No. CENT 86-36-D
MSHA Case No. MADI 85-17

TURNER BROTHERS, INC.,
RESPONDENT

Rogers No. 2 Mine

ORDER OF DISMISSAL

Before: Judge Koutras

Statement of the Case

This proceeding concerns a discrimination complaint initially filed by MSHA on behalf of the complainant Johnnie Lee Jackson against the respondent pursuant to section 105(c) of the Federal Mine Safety and Health Act of 1977. Mr. Jackson claimed that he was discharged by the respondent because he made safety complaints concerning an unsafe bulldozer which he operated while in the respondent's employ. Mr. Jackson was involved in an accident while operating the bulldozer, and the respondent claimed that he was fired for causing the accident, and that his discharge was in accord with company policy regarding accidents caused by its employees.

On January 22, 1986, MSHA filed an Application for Temporary Reinstatement on Mr. Jackson's behalf, and a hearing on the application was conducted in Muskogee, Oklahoma, on February 5, 1986. Subsequently, on March 18, 1986, I issued a decision denying Mr. Jackson's temporary reinstatement, and a hearing on the merits of the complaint was scheduled for June 25, 1986, in Muskogee, Oklahoma.

On May 5, 1986, MSHA filed a motion to withdraw its representation of Mr. Jackson. As grounds for its motion, MSHA stated that it had "discovered information which would have caused the Secretary to reject Mr. Jackson's complaint had that information been available when the investigation report was reviewed." MSHA stated further that "under these circumstances, the Secretary is obligated not to pursue the matter on behalf of Mr. Jackson and not to compel respondent to defend an action that should not have been filed."

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On May 7, 1986, I issued an order granting MSHA's motion to withdraw its representation of Mr. Jackson. Mr. Jackson was directed to file a complaint within 30 days on his own behalf or through counsel of his own choosing. Mr. Jackson failed to file such a complaint, and on June 10, 1986, I issued an Order to Show Cause as to why this matter should not be dismissed because of Mr. Jackson's failure to file a complaint on his own behalf. Mr. Jackson has failed to respond to my order. Under the circumstances, I conclude and find that this matter should now be dismissed because of Mr. Jackson's failure to pursue his complaint.

ORDER

In view of the foregoing, this matter IS DISMISSED. The hearing previously scheduled in Muskogee, Oklahoma, IS CANCELLED.

George A. Koutras
Administrative Law Judge