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JOHN HARRIS V. BENJAMIN COAL
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

JOHN A. HARRIS,
COMPLAINANT

v.

BENJAMIN COAL COMPANY,
RESPONDENT

DISCRIMINATION PROCEEDING

Docket No. PENN 87-72-D
MSHA Case No. PITT CD 86-20

Benjamin No. 1 Strip Mine

ORDER TO SHOW CAUSE

Statement of the Case

This proceeding concerns a complaint of discrimination filed by Mr. Harris against the respondent pursuant to section 105(c) of the Federal Mine Safety and Health Act of 1977. The complaint was filed on December 30, 1986, after Mr. Harris was advised by the Secretary of Labor (Mine Safety and Health Administration), that his complaint filed with that agency would not be pursued further.

In his complaint filed with the Commission, Mr. Harris states "I am requesting reinstatement and back pay and clearing of my name by Benjamin Coal Company. I feel my letter of termination was very unfair." In response to an order issued by me on July 10, 1987, Mr. Harris furnished me with a copy of his termination letter of August 12, 1986. He also furnished me with a copy of a memorandum report prepared by a Commonwealth of Pennsylvania Department of Environmental Resources supervisory mine inspector concerning a fatal surface mine blasting accident which occurred at the respondent's mine on June 17, 1986, and a copy of a "Civil Penalty Worksheet" proposing a civil penalty assessment in the amount of \$7,750 against the respondent for a violation of a state regulation concerning "casting blasting debris."

The information supplied by Mr. Harris reflects that he was employed by the respondent as a blaster, and that he was the blaster who detonated the shot which resulted in fatal injuries to a mine foreman who was killed by fly rock from the blast. As a result of this incident, Mr. Harris' state blaster's license was suspended, and he was subsequently

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discharged by the respondent on August 12, 1986, for violation of company safety rules and for "a pattern of disregard" for company safety procedures and practices.

Mr. Harris takes issue with his discharge and asserts that no other blasters have ever been terminated by the respondent because of fly rock, and that numerous incidents of vehicle damage caused by fly rock, and one incident of personal injury requiring treatment by a doctor, have not resulted in any terminations or reprimands. He further asserts that his discharge does not comport with the state civil penalty assessment findings that the accident was "a freak incident" and that the respondent's culpability was "questionable."

Discussion

Section 105(c)(1) of the Act provides as follows:

(c)(1) No person shall discharge or in any manner discriminate against or cause to be discharged or cause discrimination against or cause discrimination against or otherwise interfere with the exercise of the statutory rights of any miner, representative of miners or applicant for employment in any coal or other mine subject to this Act because such miner, representative of miners or applicant for employment has filed or made a complaint under or related to this Act, including a complaint notifying the operator or the operator's agent, or the representative of the miners at the coal or other mine of an alleged danger or safety or health violation in a coal or other mine, or because such miner, representative of miners or applicant for employment is the subject of medical evaluations and potential transfer under a standard published pursuant to section 101 or because such miner, representative of miners or applicant for employment has instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding, or because of the exercise by such miner, representative of miners or applicant for employment on behalf of himself or others of any statutory right afforded by this Act.

Upon review of the complaint filed by Mr. Harris, I find nothing to suggest that his termination was the result of any

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rights or protections afforded him under section 105(c) of the Act. In short, it would appear from his complaint and the pleadings filed in this matter that Mr. Harris does not state a claim for which relief can be granted under section 105(c)(1) of the Act.

ORDER

In view of the foregoing, the complainant John A. Harris IS ORDERED TO SHOW CAUSE within fifteen (15) days as to why his complaint should not be dismissed for failure to state a claim for which relief can be granted under section 105(c)(1) of the Act.

George A. Koutras
Administrative Law Judge