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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

ORVILLE SPARKS, COMPLAINANT	DISCRIMINATION PROCEEDING
v.	Docket No. KENT 87-181-D
SANDY FORK MINING COMPANY, INC., RESPONDENT	BARB CD 87-18 No. 10 Mine
SECRETARY OF LABOR MINE SAFETY AND HEALTH ON BEHALF OF ORVILLE SPARKS, COMPLAINANT	DISCRIMINATION PROCEEDING
v.	Docket No. KENT 87-189-D BARB CD 87-18 No. 10 Mine
SANDY FORK MINING COMPANY, INC., RESPONDENT	

ORDER OF DISMISSAL

On January 29, 1987, Orville Sparks filed a complaint, with the Mine Safety and Health Administration, alleging that on December 2, 1986, he had been discharged by Sandy Fork Mining Company, Inc., in violation of Section 105(c)(1) of the Federal Mine Safety and Health Act of 1977. The Secretary, by letter dated April 29, 1987, advised Mr. Sparks that the investigation of his complaint had not been completed, and that it had not yet been determined whether or not a violation of Section 105(c) had occurred. On June 12, 1987, Mr. Sparks filed his own complaint, with the Commission, pursuant to Commission Rule 40(b), 29 C.F.R. 2700.40(b). Subsequently, on June 25, 1987, the Secretary file his own complaint with the Commission on behalf of Mr. Sparks against Sandy Fork Mining Company, Inc. under Section 105(c)(2) of the Act. On July 23, 1987, the Secretary filed an amendment to the complaint. On July 17, 1987, the Secretary filed a Motion to Dismiss arguing that Mr. Sparks' complainant, Docket No. KENT 87-181-D, should be dismissed. In its Motion, the Secretary argued that the Federal Mine Safety Act, created a private right of action only in situations where the Secretary reaches a negative determination regarding the miner's complaint. The Secretary further argued that once it determines that a violation of the Act has occurred, the Commission no longer has jurisdiction over the private cause of action.

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On August 25, 1987, the Commission, in Gilbert v. Sandy Fork Mining Co., Inc. (Slip. Op. August 25, 1987), in essence, sustained the position of the Secretary. Based on Gilbert, supra, as applied to the facts herein, the complaint of Mr. Sparks must be dismissed.

Accordingly, Docket No. KENT 87-181-D is DISMISSED.

Avram Weisberger
Administrative Law Judge