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PAULA PRICE V. MONTEREY COAL  
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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

PAULA L. PRICE,  
COMPLAINANT

DISCRIMINATION PROCEEDING

v.

Docket No. LAKE 86-45-D  
VINC CD 85-18

MONTEREY COAL COMPANY,  
RESPONDENT

Monterey No. 2 Mine

AMENDED DECISION

Appearances: Linda Krueger MacLachlan, Esq., St. Louis,  
Missouri for the Complainant;  
Thomas C. Means, Esq., Crowell & Moring,  
Washington, D.C. for the Respondent.

Before: Judge Melick

On July 28, 1985, Paula L. Price filed a complaint of discrimination with the Secretary of Labor under Section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et. seq., the "Act" (FOOTNOTE 1), alleging inter alia that Monterey Coal Company (Monterey) discriminated against her in violation of Section 105(c)(1) of the Act by suspending her for refusing to wear metatarsal safety boots provided by Monterey. Ms. Price maintains that the boots did not fit, caused foot injuries and presented a health and safety hazard.

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Thereafter, on January 7, 1986, the Secretary's representative responded to the Complaint. The letter reads as follows:

Your complaint of discrimination under section 105(c) of the Federal Mine Safety and Health Act of 1977 has been investigated by a special investigator of the Mine Safety and Health Administration (MSHA).

A review of the information gathered during the investigation has been made. On the basis of that review, MSHA has determined that your complaint of discrimination has been satisfied and that no further pursuit of the complaint is required.

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If you should disagree with MSHA's determination, you have the right to pursue your action and file a complaint on your own behalf with the Federal Mine Safety and Health Review Commission at the following address:

Federal Mine Safety and Health Review Commission  
1730 K Street N.W.

Washington, D.C. 20006 (202) 653-5629  
Section 105(c) provides that you have the right, within 30 days of this notice, to file your own action with the Commission.

After further unsuccessful efforts to have the Secretary represent her under section 105(c)(2) of the Act, Ms. Price filed the instant proceedings under Section 105(c)(3) of the Act and under what was then Commission Rule 40(b). (FOOTNOTE 2)

In her initial request to the Commission Ms. Price stated in part as follows:

I would like to file a complaint in my own behalf concerning discrimination under section 105(c) of the Federal Mine Safety and Health Act of 1977. MSHA has determined my complaint has been satisfied. I feel it has only been partially satisfied.

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Subsequently, in a decision issued on August 25, 1987, a majority of the Commission invalidated Rule 40(b) in part and stated as follows:

Section 105(c) does not provide that complainants may file complaints on their own behalf if the Secretary has not determined whether a violation has occurred within 90 days of the filing of the complaint. To the contrary section 105(c)(3) expressly provides that the complainant may file his private action only after the Secretary has informed the complainant of his determination that a violation has not occurred:

Within 90 days of the receipt of the complaint filed under [Section 105(c)(2) ], the Secretary shall notify, in writing, the miner . . . of his determination whether a violation has occurred. If the Secretary, upon investigation, determines that the provisions of [section 105(c) ] have not been violated, the complainant shall have the right within 30 days of the Secretary's determination, to file an action on his own behalf before the Commission, charging discrimination or interference in violation of [section 105(c)(1) ].

Gilbert v. Sandy Fork Mining Company Inc. and Secretary on behalf of Gilbert v. Sandy Fork Mining Company Inc., Dockets No. KENT 86Ä49ÄD and KENT 86Ä76ÄD, slip opinion p. 11.

In that decision the majority also held that its ruling therein was applicable to any individual discrimination complaint then pending before the Commission.

In light of the above it is clear that I am now without legal authority to continue the instant proceeding under section 105(c)(3) of the Act. The Secretary has not informed the Complainant herein of a determination that a violation has not occurred. (FOOTNOTE 3) Accordingly I have no choice but to dismiss this case.



employment if the Secretary determines that no violation has occurred, or if the Secretary fails to make a determination within 90 days after the miner complained to the Secretary.

~FOOTNOTE\_THREE

3 On the contrary, testimony at hearings in this case indicates that the Secretary's representatives found that there was a violation of section 105(c) but decided that in light of the purportedly small amount of damages involved and the heavy caseload in the Solicitor's office the case was not significant enough for the Secretary to pursue. Tr. 2589-2590.