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KENNETH MCCOOL AND OTHERS V. O C & W COAL
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

KENNETH A. MCCOOL AND OTHERS,
COMPLAINANTS

COMPENSATION PROCEEDINGS

Docket No. CENT 87-71-C

v.

No. 6 Mine

O C & W COAL COMPANY,
RESPONDENT

DECISION

Appearances: No appearance was made for Complainants;
John Stephenson, Minority Stockholder,
O C & W Coal Company, Tulsa, Oklahoma,
for the Respondent;

Before: Judge Morris

1. Complainant Kenneth A. McCool, appearing pro se, brought this action against respondent seeking compensation for himself and others(FOOTNOTE 1) pursuant to Section 111 of the Federal Mine Act, 30 U.S.C. 801 et seq.

2. The file contains a copy of a voluntary petition under Chapter Eleven showing the debtor as "Oklahoma, Colorado and Wyoming Corporation." The petition shows a filing date of October 7, 1987, as Case No. 87-01159 in the United States Bankruptcy Court for the Eastern District of Oklahoma.

3. This compensation case was originally set for a hearing in Tulsa, Oklahoma on August 9, 1988. Complainant McCool and respondent were advised of said hearing by certified mail.

4. On August 9, 1988, no party appeared at the hearing (Transcript, August 9, 1988).

5. On August 11, 1988, the judge issued an order to show cause addressed to Complainant McCool.

6. By letter dated August 21, 1988, McCool stated he was working in Texas and he stated "(M)aybe we can get another time appointed."

7. After correspondence it was indicated an agreeable site for Complainant McCool would be Amarillo, Texas.

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8. On September 21, 1988, a notice of hearing was issued setting the case in Amarillo, Texas. The parties were advised by certified mail.

9. Subsequently, after a conference call with representatives of the parties, it was agreed a more convenient hearing site would be Tulsa, Oklahoma. On November 28, 1988, the parties were advised by certified mail that the hearing in Amarillo, Texas was cancelled. Further, the same notice provided that the case was reset for February 14, 1989, in Tulsa, Oklahoma. A return receipt by U.S. Mail indicated McCool was served with the notice of hearing.

10. On February 14, 1989, Complainant Kenneth A. McCool failed to appear for the hearing. John Stephenson, Minority Stockholder, appeared for respondent (Transcript, February 14, 1989).

11. The judge has not been advised of any reason or excuse why Complainant McCool failed to appear at the second hearing.

In view of the foregoing I conclude that Complainant McCool does not intend to prosecute this case.

Accordingly, the case is dismissed.

John J. Morris
Administrative Law Judge

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FOOTNOTES START HERE

~FOOTNOTE_ONE

1. The "others" are identified only by name; the file does not contain any addresses for complainants other than McCool.