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WINSTON MADDEN V. RONALD SUMMERS AND SUMCO
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

WINSTON MADDEN,

COMPLAINANT

DISCRIMINATION PROCEEDING

Docket No. KENT 89-62-D

v.

BARB CD 88-46

RONALD SUMMERS AND SUMCO,

RESPONDENTS

DEFAULT DECISION

Before: Judge Maurer

On December 28, 1988, complainant filed a Complaint, alleging a violation of section 105(c)(1) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815(c)(1). There was no response from the respondents, so on February 13, 1989, Chief Judge Merlin issued an Order directing the operator to answer or show cause within 30 days. On March 13, 1989, an Answer was received and on March 17, 1989, the case was assigned to this administrative law judge.

On April 26, 1989, complainant, by counsel, filed a set of interrogatories and requests for production. When no responses were received, complainant filed a motion to compel discovery and for attorney fees with me on June 5, 1989. No responsive pleading to this motion was filed. On July 20, 1989, I issued an Order granting complainant's motion to compel discovery and awarding complainant \$156.25 as attorney fees for the time spent by his lawyer in obtaining this order. That order directed the respondents to answer complainant's interrogatories, produce the documents sought and pay the attorney fees awarded within the following 15 days, or by August 4, 1989.

On August 18, 1989, complainant filed a motion for default decision, alleging that the respondents had still not responded in any manner to complainant's discovery requests and had not paid the awarded attorney fees, as ordered on July 20.

On September 6, 1989, a response to this latest motion was received from counsel of record for respondents. He asserted that since May of 1989, he has not been able to contact the respondents herein and has been informed that they are no longer living at their former address. He was unable to obtain any forwarding address for them and has likewise been unable to contact them by telephone.

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On September 12, 1989, I issued an Order to respondents to show cause within 10 days why they should not be held in default for failure to comply with my order of July 20, 1989. There has been no response to date.

After reviewing the entire file of this proceeding once again, I am of the opinion that because of the respondents' extremely lackadaisical approach to the defense of this case, outlined above, they have waived any further right to a hearing. Therefore, complainant's motion for default decision IS GRANTED.

Accordingly, I find that as alleged in the Complaint:

1. Complainant Madden was employed by Sumco and Summers for approximately 4 months prior to his discharge on June 14, 1988, as a welder and general laborer.

2. On June 14, 1988, Madden was assigned to cut out (remove) a section of an abandoned coal tipple located at the mine site operated by Summers and Sumco.

3. Complainant Madden was discharged by Summers on June 14, 1988, because of his refusal to continue working on the tipple unless safety precautions were taken; and because he had pulled down part of the tipple with an endloader in order to abate a hazardous condition.

4. The discharge of Madden by Summers on June 14, 1988, violated section 105(c)(1) of the Federal Mine Safety & Health Act of 1977.

ORDER

It is ORDERED that:

1. Complainant shall file a statement within twenty (20) days of this Decision, indicating the specific relief requested. The statement shall be served on the respondents who shall have twenty (20) days from the date service is attempted to reply thereto.

2. This Decision is not final until a further Order is issued with respect to complainant's relief. In the event that a contested issue of fact arises as to the proper type or quantum of damages due the complainant, a hearing on that issue or issues will be required.

Roy J. Maurer
Administrative Law Judge