

CCASE:
DENNY R. THOMPSON V. AMHERST COAL
DDATE:
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

DENNY ROGER THOMPSON,
COMPLAINANT
v.

DISCRIMINATION PROCEEDING

Docket No. WEVA 86-196-D

AMHERST COAL COMPANY,
RESPONDENT

HOPE CD 85-17

DECISION
AND
ORDER OF DISMISSAL

Before: Judge Melick

On August 15, 1986, at the request of the parties the captioned proceedings were stayed pending resolution of a case before the Courts of West Virginia involving the same underlying facts. As part of that Stay Order the parties were directed "to file with the undersigned a written report concerning the status of proceedings in the West Virginia Courts on or before January 1, 1987, and on the first day of each quarter thereafter until those proceedings have been exhausted".

On November 4, 1988, an Order to Show Cause was directed to the Complainant for his failure to file the reports required by the Stay Order. In response to the Order to Show Cause the Complainant filed a status report and stated that he would file quarterly status reports commencing January 5, 1989. Under the circumstances an Order Continuing Stay was issued. Thereafter however no status reports were filed and on December 20, 1989, an Order to Show Cause was again issued to the Complainant directing him to show cause on or before January 2, 1990, why "these proceedings should not be dismissed for failure to comply with the Orders of this Judge issued August 15, 1986, and December 16, 1988."

Copies of the Order to Show Cause were sent by certified mail to both the Complainant himself and to his last known attorney. The copy of the Order to Show Cause sent to the Complainant was returned marked "forwarding time expired". The copy of the Order to Show Cause sent to the Complainant's last designated attorney was returned marked "attempted -- not known." The failure of the Complainant and his attorney

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to inform the Commission of their current addresses is in violation of Commission Rule 5(c), 29 C.F.R. 2700.5(c), and the Commission is therefore unable to serve further notices in this proceeding. In addition the Order to Show Cause issued December 20, 1989, has not and can not therefore be answered. Accordingly the captioned proceeding is dismissed.

ORDER

Discrimination Proceeding Docket No. WEVA 86-196-D is hereby DISMISSED.

Gary Melick
Administrative Law Judge