

CCASE:  
ROY FARMER & OTHERS V. ISLAND CREEK COAL  
DDATE:  
19901220  
TTEXT:

~2641

Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)  
Office of Administrative Law Judges

ROY FARMER AND OTHERS,  
COMPLAINANTS

COMPENSATION PROCEEDING

Docket No. VA 91-31-C

v.

VP-3 Mine

ISLAND CREEK COAL COMPANY,  
RESPONDENT

ORDER OF DISMISSAL

Before: Judge Broderick

On November 2, 1990, Applicant Roy Farmer, Miner Representative, filed on behalf of himself and some 275 other miners at the Virginia Pocahontas No. 3 Mine of Respondent a claim for compensation under section 111 of the Mine Act. The claim covers the period April 17 through April 20, 1990, when the employees were said to have been idled following a section 107(a) imminent danger withdrawal order accompanied by a section 104(a) citation charging a violation of a mandatory health and safety standard. Copies of the order and citation accompanied the claim for compensation.

Island Creek filed an Answer on November 28, 1990, and a Motion to Dismiss on November 30, 1990.

The Motion to Dismiss argues that the case should be dismissed because it was filed 198 days from the date of the claimed entitlement, and Commission Rule 35, 29 C.F.R. 2700.35 requires that a complaint for compensation shall be filed within 90 days after the commencement of the period the Complainants are idled or would have been idled as a result of the order which gives rise to the claim.

Complainants have not replied to the Motion.

Because the complaint appears to have been filed substantially later than Rule 35 permits, and Complainants have not advanced any excuse or justification for the late filing, I conclude that the motion should be granted.

~2642

Therefore, IT IS ORDERED that the claim for compensation and this proceeding are DISMISSED.

James A. Broderick  
Administrative Law Judge