

CCASE:
SOL (MSHA) v. LJ'S COAL
DDATE:
19910503
TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges
2 Skyline, 10th Floor
5203 Leesburg Pike
Falls Church, Virginia 22041

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

v.

LJ'S COAL CORPORATION,
RESPONDENT
CIVIL PENALTY PROCEEDINGS

Docket No. KENT 90-356
A. C. No. 15-16477-03526

Docket No. KENT 90-399
A. C. No. 15-16637-03528

No. 3 Mine

Docket No. KENT 90-358
A. C. No. 15-16637-03504

No. 4 Mine

ORDER

On April 8, 1991, Respondent filed a Motion asking "the Court" to "disqualify" me from hearing the above captioned cases on the ground that in not approving a Joint Motion to Approve Settlement, I had "determined" my "opinion" in "these matters."

29 C.F.R. 2700.81(b) provides that a Party may request a Judge to withdraw ". . . on grounds of personal bias disqualification by filing promptly upon discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification."

Respondent has not filed any affidavit setting forth matters alleged to constitute grounds of disqualification.

In an Order entered February 25, 1991, I set forth the pertinent history of these cases as follows: "On January 14, 1991, Counsel for the Petitioner filed a Joint Motion to Approve Settlement (the Motion). In essence, neither the Motion nor the exhibits attached to it allege the existence of any facts or circumstances which contravene or dilute assertions set forth in the various Citations at issue, and in the accompanying Narrative Findings for Special Assessment. Specifically the Motion does not allege any facts or circumstances with regard to the gravity of the alleged violations, and the Operator's negligence which contravene or dilute the assertions set forth in the Citations at issue. Indeed, the Joint Motion does not allege any facts or circumstances other than those set forth in the various Citations."

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On January 18, 1991, in a conference call I initiated between Counsel for both Parties, it was explained that, inasmuch as the Motion did not contain sufficient facts to support the proposed settlements it could not be approved.

In my analysis of the Joint Motion to Approve Settlement, and in my Decision denying the Motion, and in my conversation with the Parties on January 18, 1991, concerning my inability to approve the Motion, I in no way reached any opinion as to the merits of the issues raised by the pleading as the record did not contain any evidence. I continue to have a totally open mind with regard to the issues raised by the pleadings, as there is no evidence before me. My mind shall remain open until a evidentiary hearing scheduled for June 18-20, 1991, is concluded and post hearing briefs are received. Only at this time shall I weigh the evidence and reach a decision on all matters at issue. The fact that I have denied a Motion to Approve Settlement on the grounds that it does not provided facts in support of the appropriateness of the proposed penalties, does not in any way preclude me from subsequently reaching an objective, impartial decision based solely on the evidence to be presented at the evidentiary hearing.

Accordingly, for all these reasons, Respondent's Motion is DENIED.

Avram Weisberger
Administrative Law Judge
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