

CCASE:
AVIS B. PERKINS v. MORNINGSIDE DEVELOPMENT
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges
2 Skyline, 10th Floor
5203 Leesburg Pike
Falls Church, Virginia 22041

AVIS B. PERKINS,
COMPLAINANT

v.
MORNINGSIDE DEVELOPMENT
CORPORATION,

RESPONDENT

DISCRIMINATION PROCEEDING

Docket No. WEVA 91-23-D
MSHA Case No. MORG CD 90-12

Little Falls Mine

ORDER

On April 25, 1991, an order was issued directing Complainant to file a Statement indicating the specific relief requested. It was further provided in the order that Respondent shall have 20 days from the date service of the Statement is attempted, to reply to the statement. Complainant's statement was received by the Commission on May 17, 1991. In its statement, Complainant's counsel certified that he mailed Respondent a copy of the statement on May 14, 1991. Respondent has not filed any response to Complainant's Statement.

Complainant seeks the imposition of punitive damages in the amount of \$10,000. The complaint in this case was filed pursuant to Section 105 of the Federal Mine Safety and Health Act of 1977 (the Act). Neither section 105, supra, nor the Rules of the Commission, 29 C.F.R. 2700 et seq., provide for the imposition of punitive damages. Further, such relief is not proper in this case. The record does not contain any evidence surrounding the alleged discriminatory acts, as there was no evidentiary hearing in this matter, because Respondent had defaulted in not filing an Answer. Hence, there are no facts before me to support the imposition of punitive damages.

The balance of relief sought by Complainant is proper under the Act.

Accordingly, it is ORDERED that, within 30 days of this Order, Respondent shall pay Complainant the following sums:

- | | |
|---|-------------|
| (1) Backpay from July 13, 1990 totalling | \$24,000.00 |
| (2) Attorney Fees | \$ 950.00 |
| (3) Travel expenses in seeking employment | \$ 286.50 |
| | \$25,236.50 |

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It is further ORDERED that Respondent shall, within 30 days of this Order reinstate Complaint to his prior position.

Avram Weisberger
Administrative Law Judge
(703) 756-6210
FAX (703) 756-6201