

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR  
WASHINGTON, D.C. 20006

September 5, 1991

KIMMIE NOAH, : CONTEST PROCEEDINGS  
Contestant :  
 : Docket No. SE 91-544-R  
v. : through SE 91-655-R  
 :  
 : Citation No. 9860517; 4/4/91  
SECRETARY OF LABOR, : through 9860628; 4/4/91  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Consolidation Coal Company  
Respondent :  
 : Matthews Mine  
 :  
 : Mine ID 40-00520

DECISION

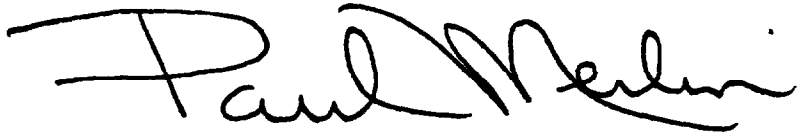
Before: Judge **Merlin**

These cases are notices of contest filed under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d), seeking to challenge the Secretary's proposed revocation of contestant's status as a person certified by the Secretary of Labor to take **respirable** dust samples. Each notice of contest relates to a citation issued by the Secretary to contestant's operator, Consolidation Coal-Company, for allegedly tampering with a dust cassette. The Secretary has filed a motion to dismiss and contestant has submitted a memorandum in opposition.

On September 4, 1991, I held in Roberts v. Secretary, Docket No. KENT 91-896-R, that an individual such as Contestant has rights arising from his certification which are entitled to due Process protection. However, I further held that I had no jurisdiction to entertain an independent suit by such a miner or to grant him relief. The issues in Roberts are the same as those Presented here and therefore, that decision is dispositive of this matter.

As contestant's memorandum points out, the operator here, unlike the operator in Roberts, has filed notices of contest **challenging** the citations issued to it. Contestant may wish to **consider** the possibility of becoming a party to the operator's suits. (See Footnote 1, page 3 of the Roberts decision.)

In light of the foregoing, it is ORDERED that these cases be and are hereby DISMISSED.

A handwritten signature in cursive script that reads "Paul Merlin". The signature is written in black ink and is centered on the page.

Paul Merlin  
Chief Administrative Law Judge

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