

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

September 5, 1991

DANIEL SERGE, : CONTEST PROCEEDING
Contestant :
: Docket No. WEVA 91-1386-R
v. : 'Cassette No. 46347258
: :
: Consolidation Coal Company
SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH : Osage No. 3
ADMINISTRATION (MSHA), :
Respondent : Mine ID 46-01455

DECISION

Before: Judge Merlin

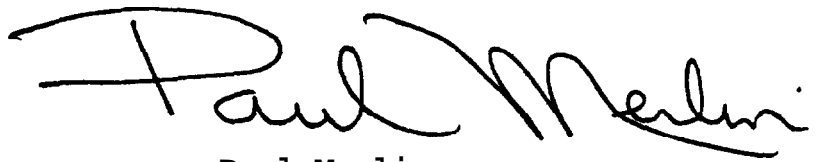
This case is a notice of contest filed under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d), seeking to challenge a proposed revocation of contestant's status as a person certified by the Secretary of Labor to take respirable dust samples. The Secretary has filed a motion to dismiss and contestant has submitted a memorandum in opposition.

By letter dated August 23, 1991, counsel for contestant advised that the decision in Roberts v. Secretary, Docket NO. KENT 91-896-R, would govern the outcome of this case. Similarly, by letter also dated August 23, 1991, the Secretary agreed that the decision in Roberts would be controlling here.

On September 4, 1991, I held in Roberts that an individual such as contestant has rights arising from his certification which are entitled to due process protections. However, I further held that I had no jurisdiction to entertain an independent suit by such a miner or to grant him relief. The facts here are the same as those in Roberts¹ and the conclusions reached there obtain here as well.

¹ The file does not indicate why no citation was issued to the operator with respect to the cassette in this matter whereas the operator was cited for sixteen other cassettes involving contestant.

In light of the foregoing, it is ORDERED that this case be and is hereby DISMISSED.

A handwritten signature in cursive script that reads "Paul Merlin". The signature is written in black ink and is positioned above the printed name and title.

Paul Merlin
Chief Administrative Law Judge

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