

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

September 5, 1991

DANIEL SERGE, : CONTEST PROCEEDINGS
 : **Contestant** :
 : :
 : Docket No. WEVA 91-1494-R
 : through **WEVA** 91-1509-R
 : :
 : Citation No. 9861603; **4/4/91**
SECRETARY OF LABOR, : through 9861618; **4/4/91**
 : :
 : Consolidation Coal Company
 : :
 : **Osage No. 3 Mine**
 : :
 : Mine ID **46-01455**
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), :
Respondent :

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 of law 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 on a white background.

Paul Merlin
Chief Administrative Law Judge

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