

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

September 5, 1991

DONALD CASE,	:	CONTEST PROCEEDING
Contestant	:	
	:	Docket No. WEVA 91-1614-R
v.	:	Decertification Letter
	:	
	:	Terry Eagle Coal Co.
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Warren Eagle No. 2
ADMINISTRATION (MSHA),	:	
Respondent	:	Mine ID 46-04758.

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 brief in opposition.

Contestant's brief is virtually identical to the one filed in Roberts v. Secretary, Docket No. KENT 91-896-R. Also, the Solicitor has submitted a letter dated August 23, 1991, stating that a determination in Roberts would be controlling. Upon review of the file I find that the issues presented here are the same as those in Roberts and that therefore, the decision in that case is dispositive.

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 protection. However, I further held that I had no jurisdiction to entertain the suit and grant any relief. Those conclusions obtain here as well.

It should be noted, however, that by letter dated August 27, 1991, the Solicitor advised that a penalty petition has been filed against the operator with respect to the matters involved herein. (Docket No. WEVA 91-1732). Contestant may wish to consider the possibility of becoming a party to the penalty suit. (See Footnote 1, page 3 of the Roberts decision.)

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

A handwritten signature in black ink, reading "Paul Merlin". The signature is written in a cursive style with a large, stylized initial "P".

Paul Merlin
Chief Administrative Law Judge

Distribution:

Martin J. Glasser, Esq., Webster J. Arceneaux, III, Esq., Lewis, Ciccarello & Friedberg, Suite 700, One Valley Square, Charleston, WV 25301 (Certified Mail)

James B. Crawford, Esq., Office of the Solicitor, U. S. Department of Labor, 4015 Wilson Boulevard, Arlington, VA 22203 (Certified Mail)

/gl