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ROY FARMER v. ISLAND CREEK COAL
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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

ROY FARMER, ET AL.,
COMPLAINANTS

COMPENSATION PROCEEDING

v.

Docket No. VA 91-31-C

ISLAND CREEK COAL COMPANY,
RESPONDENT

VP-3 Mine

DECISION

Appearances: Michael Dinnerstein, Esq., and Mary Lu Jordan,
Esq., United Mine Workers of America, Washington,
D.C., for the Complainants;
John Graykowski, Esq., and Timothy M. Biddle,
Esq., Crowell & Moring, Washington, D.C., for the
Respondent.

Before: Judge Melick

This case is before me upon remand by the Commission on May 9, 1991, and upon subsequent reassignment for further proceedings to determine (1) whether "good cause" exists for the Complainants failure to have presented to the judge then presiding, their excuses for the untimely filing of their complaint for compensation, and, if so, (2) whether there is "adequate justification" for the late filing of their complaint and, if so, (3) whether the Respondent has suffered "material legal prejudice" from the delay.

A thorough analysis of the law regarding these issues and a detailed procedural history of the case is provided in the Commission's decision and need not be restated herein. It is sufficient for purposes of this decision to note that on April 17, 1990, the Department of Labor, Mine Safety and Health Administration (MSHA), issued to the Island Creek Coal Company (Island Creek) an imminent danger withdrawal order and a related citation alleging dangerous concentrations of methane in its VP-3 Mine. By letter dated October 29, 1990, and received by the

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Commission on November 2, 1990, Roy Farmer, identifying himself as a miner's representative, filed a "request for compensation per Section 111 of Coal Mine Safety and Health Act of 1977."
(Footnote 1)

Commission Procedural Rule 35, 29 C.F.R. 2700.35 provides as follows:

A complaint for compensation under section 111 of the Act, 30 U.S.C. 821 shall be filed within 90 days after the commencement of the period the complainants are idled or would have been idled as a result of the order which gives rise to the claim.

As the Commission noted in its decision, Mr. Farmer's complaint, submitted to the Commission more than 6 months after the issuance of the imminent danger order, is silent as to reasons for the late filing. On November 28, 1990, Island Creek filed its answer asserting that the complaint "must be dismissed because it was not filed within the period required by Commission Rule 35". On November 30, 1990, Island Creek also filed a motion to dismiss arguing that the Complaint was late filed and that no excuse was offered for the untimeliness. There is no evidence that the Complainants ever responded to the dismissal motion. As noted by the Commission, its procedural rules provide a party 10 days after the date of service, plus 5 additional days for a document served by mail, to file a statement in opposition to a motion. 29 C.F.R. 2700.8(b) and 2700.10(b). In this instance then the Complainants' 15-day period for filing a response ended on December 17, 1990.

Subsequently on December 20, 1990, the presiding judge issued his order of dismissal noting representations that the complaint was filed 198 days after the date of the alleged entitlement and that Rule 35 requires filing within 90 days after that entitlement. Referencing the late filing and Complainants failure to respond to the motion or to offer any justification for the late filing, the judge granted the motion and dismissed the proceeding. Subsequently, based in part upon excuses advanced in a petition for review filed with the Commission on January 4, 1991, the Commission remanded this case to give the Complainants an additional opportunity at an evidentiary hearing to present "good cause" and/or "adequate justification" for the untimely filing of its Complaint and its failure to have responded to the motion to dismiss.

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At evidentiary hearings on August 22, 1991, Mr. Farmer clearly established that even before the Motion to Dismiss was filed in this case, he made reasonable efforts to obtain copies of the Commission Rules of Procedure from both this Commission and the Department of Labor, but without success. These rules, as previously noted, provide time frames and guidance for opposing a motion such as the Motion to dismiss at issue herein. Mr. Farmer also testified credibly that he thought he would be given an opportunity to present the reasons for his late filing at an oral hearing, and that he was unaware of a requirement for a written response. Under the circumstances, I find that good cause does indeed exist for Complainants' failure to have filed a written response to the Motion to Dismiss or to have otherwise timely presented their excuses for the late filing of their complaint.

The Complainants have also furnished adequate justification for the late filing of their complaint. The credible evidence establishes that their representative, Mr. Farmer, was indeed ignorant of the filing requirements for compensation claims. Moreover, while it is true that Farmer's educational background would suggest that he should be held to a higher standard, compensation proceedings under the Act are relatively rare and, from the mere fact of his having a college degree in business administration and that he was "reading the law" for the Virginia Bar, it cannot reasonably be inferred that he should have had or should even be expected to have such esoteric knowledge.

In addition, there is sufficient credible evidence in the record to conclude that Farmer did converse with Mine Manager Eddie Ball about the issue of compensation and that Ball at the very least advised Farmer that nothing would be done about compensation until the contest of the underlying citation was resolved. I also find from the credible evidence that Mr. Farmer did contact officials from the Federal Mine Safety and Health Administration within the 90 day deadline but was not provided sufficient information to file a timely complaint with this Commission. From these circumstances alone, I find that "adequate justification" exists to excuse the late filing herein. I further find that there is insufficient evidence of "legal prejudice" to otherwise warrant dismissal of these proceedings.

Under the circumstances the Motion to Dismiss is denied and this case may now proceed on the merits.

Gary Melick
Administrative Law Judge

Footnote starts here:-

1. The action herein would come within Section 111 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act."