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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), ON BEHALF OF MARTIN L. RICHARDSON, COMPLAINANT	DISCRIMINATION PROCEEDING Docket No. WEST 91-143-DM MD 90-19 Mine I.D. No. 26-02161
v.	Docket No. WEST 91-262-DM
F.K.C., INCORPORATED, RESPONDENT	WE ME 90-19 F.K.C. Portable
	(Consolidated)

ORDER OF DISMISSAL

Before: Judge Morris

These cases arose under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, et seq.

On December 26, 1990, the Secretary of Labor filed an application for reinstatement on behalf of Complainant, pursuant to Section 105(c) and Commission Rule 44.29 C.F.R. 2700.44, as amended.

On January 15, 1991, an order of temporary reinstatement was issued.

On April 9, 1991, in the case docketed as WEST 91-262-DM, the Secretary filed a complaint of discrimination on behalf of Complainant, pursuant to Section 105(c)(2) of the Mine Act. Complainant alleged Respondent violated Section 105(c)(1) of the Act.

In its answer filed on May 13, 1991, Respondent denied the Commission had jurisdiction in this matter. Further, Respondent asserted its activities did not render it subject to the Mine Act. In addition, Respondent asserted Complainant was not a miner subject to the Act.

On June 5, 1991, Docket Nos. WEST 91-143-DM and WEST 91-262-DM were consolidated and scheduled for a hearing on July 18, 1991.

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On June 17, 1991, the hearing date was canceled and the case was reset to begin on October 16, 1991.

On October 15, 1991, the Secretary moved to dismiss the proceedings. As a grounds therefor, the Secretary stated that "at the time of the alleged discriminatory act, the Complainant was not a 'miner,' as defined by Section 3(g)" . . . of the Act.

In her motion the Secretary further alleged that "at the time of the alleged discriminatory act, neither F.K.C., Inc., nor F.K.C. Sand and Gravel Products, Inc., were engaged in the type of activity that would classify the companies as operators under Section 3(d), 30 U.S.C. 802(d) of the Mine Act. In addition, neither company was engaged in activity as a mine, as defined in Section 3(h)(1) or (2), 30 U.S.C. 802(h)(1) or (2) of the Mine Act.

For good cause shown, the motion to dismiss is GRANTED and the cases are DISMISSED without prejudice.

John J. Morris
Administrative Law Judge