

CCASE:
DAVID L. STRITZEL v. SOL (MSHA)
DDATE:
19920121
TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges
2 Skyline, 10th Floor
5203 Leesburg Pike
Falls Church, Virginia 22041

DAVID L. STRITZEL,
COMPLAINANT

v.

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION, AND
CHARLES RATH & MARK O.
ESLINGER,
RESPONDENTS

DISCRIMINATION PROCEEDING

Docket No. LAKE 91-633-D
VINC CD 91-05

ORDER LIFTING STAY AND GRANTING
MOTION TO DISMISS

This case was stayed pending the Court of Appeals decision in Wagner v. Secretary of Labor, No. 91-2025, 4th Circuit. On November 5, 1991, the Court issued its decision, affirming the Commission's decision of June 6, 1990. The Court and the Commission have held that MSHA and its employees acting within the scope of their statutory authority are not "persons" within the meaning of 105(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. I find these rulings to be dispositive of the issues raised in the Secretary's motion to dismiss and Complainant's response to the motion.

WHEREFORE IT IS ORDERED that:

1. The STAY is lifted.
2. The Secretary's motion to dismiss is GRANTED and this proceeding is DISMISSED.

William Fauver
Administrative Law Judge