

CCASE:  
ROY FARMER AND OTHERS V. ISLAND CREEK  
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ROY FARMER and OTHERS, : COMPENSATION PROCEEDINGS  
Complainants :  
v. : Docket No. VA 91-56-C  
: :  
ISLAND CREEK COAL COMPANY, : Docket No. VA 91-57-C  
Respondent :  
: VP-3 Mine

ORDER OF DISMISSAL

Before: Judge Koutras

Statement of the Proceedings

These proceedings concern complaints for compensation filed by the complainants against the respondent pursuant to section 111 of the Federal Mine Safety and Health Act of 1977. In Docket No. VA 91-56-C, the complaining miners claimed compensation for the time they were idled as a result of a section 107(a) Imminent Danger Order No. 3354742, issued by MSHA Inspector Arnold D. Carico on December 5, 1990. The inspector also issued a simultaneous section 104(a) Citation No. 3354743, citing an alleged violation of mandatory safety standard 30 C.F.R. 75.316, in conjunction with the imminent danger order.

In Docket No. VA 91-57-C, the complaining miners claimed compensation for the time they were idled as a result of a section 107(a) Imminent Danger Order No. 3508496, issued by MSHA Inspector Claudy J. Scamell on December 13, 1990. Contrary to the assertion made by the complainants in their complaint, I find no evidence that the order issued by inspector Scamell on December 13, 1990, was accompanied by a section 104(a) citation.

On April 3, 1991, I issued decisions in Island Creek Coal Company v. Secretary of Labor (MSHA) and UMWA District 28, Local 1640, Docket Nos. VA 91-47-R, VA 91-48-R, and VA 91-49-R, vacating the aforementioned imminent danger orders and citation which gave rise to the instant compensation claims. 13 FMSHRC 592 (April 1991). The Secretary and the UMWA filed appeals with the Commission, and the compensation claims were stayed pending the Commission's review and decision. Thereafter, on March 3, 1993, the Commission rendered its decision affirming my decisions vacating the imminent danger orders and citation. Under the circumstances, I issued an Order to Show Cause on

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March 16, 1993, ordering the parties to state why the previously issued stay should not be lifted and the compensation claims dismissed as a result of the Commission's decision. The parties were ordered to respond to my show-cause order within ten (10) days of its receipt.

#### Discussion

My show-cause order was served on the parties by certified mail. The return postal receipts reflects that the order was delivered to the respondent's counsel on March 22, 1993, and to the complainant's representative on March 23, 1993. On March 25, 1993, the respondent's counsel informed me by telephone that the respondent does not oppose the lifting of the stay and the dismissal of these claims, and that the respondent does not wish to respond further.

The complainant's representative of record (Roy Farmer) has not responded to my show-cause order, nor has he communicated with me further in this regard. Commission Rule 63(a), 29 C.F.R. 2700.63(a), provides as follows

(a) Generally. When a party fails to comply with an order of a judge or these rules, an order to show cause shall be directed to the party before the entry of any order of default or dismissal.

I have on several occasions in the past furnished Mr. Farmer (at his request) with copies of the Commission's procedural rules in several Island Creek civil penalty proceedings in which Mr. Farmer was granted party status as the representative of miners. Under the circumstances, I have no reason to believe that Mr. Farmer is ignorant of the rules. Accordingly, I conclude and find that the compensation claims should be dismissed because of the complainants' failure to respond to my Order.

#### ORDER

The previous stays ARE LIFTED. The compensation claims ARE DENIED, and these matters ARE DISMISSED.

George A. Koutras  
Administrative Law Judge

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