

CCASE:  
RICKY DARRELL EALY V. R B MINING  
DDATE:  
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TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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5203 LEESBURG PIKE  
FALLS CHURCH, VIRGINIA 22041

RICKY DARRELL EALY, : DISCRIMINATION PROCEEDING  
Contestant :  
v. : Docket No. KENT 93-662-D  
: BARB CD 93-15  
: R B MINING COMPANY, INC., : RB #4 Mine  
Respondent :

SUMMARY DECISION AND ORDER OF DISMISSAL

On March 9, 1993, Contestant, Ricky Darrell Ealy, filed a discrimination complainant with MSHA alleging that he had been fired on June 10, 1992, due to an injury to his knee and the need for surgery. On May 17, 1993, MSHA informed Contestant that it had determined that a violation of 105(c) of the Act had not occurred. Thereupon, Mr. Ealy filed a complaint with the Commission.

Respondent, in its Answer, requested dismissal of the Complaint on the grounds that it was not timely filed and that it failed to state a cause of action upon which relief could be granted. On August 5, 1993, I issued an Order To Show Cause requiring Mr. Ealy to show why the Complaint should not be dismissed on the grounds raised in the Answer.

Contestant responded to this Order on August 20, 1993. With regard to the timeliness issue, he states that he filed his discrimination case nine months after he was fired because he was unaware of the requirement that discrimination complaints be filed within 60 days.(Footnote 1) As to the issue of whether his complaint states a claim upon which relief can be granted, Contestant responded:

I do feel I was discriminated against due to the injury to my knee and that I had to have surgery. I feel the only reason I was fired was so that the mines (sic) would not have to pay me compensation.

In light of my disposition of the issue of whether Contestant has stated a claim upon which relief can be granted, I need not reach the question as to whether his response is sufficient to avoid dismissal on timeliness grounds.

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Contestant also alleges that he was threatened with discharge if he filed for Black Lung Benefits.

Mr. Ealy, in responding to the Show Cause Order, attached a June 18, 1992, letter he filed with an agency of the State of Kentucky. On page 4 of that letter there is an account of conversation with one Steve Brock on June 13, 1992, in which Mr. Brock apparently told Contestant that Federal Mine Inspectors were on Respondent's property and that Respondent "was saying that [Contestant] had called them, which [Contestant] had not." Contestant does not allege, however, that Respondent was under the impression that he had contacted MSHA prior to discharging him on June 10, 1992.

The record in this matter contains no allegation that Contestant engaged in activity protected by section 105(c) of the Federal Mine Safety and Health Act. See Randy J. Collier v. Great Western Coal, Inc., 12 FMSHRC 35 (Judge Broderick, January 1990). Even if Mr. Ealy were to establish that Respondent discriminated against him due to his physical condition or his need of surgery, I would be unable to afford him any relief.

I construe Respondent's Answer as a motion for summary decision pursuant to the Commission's Rules of Procedure, 29 C. F. R. 2700.67. Missouri Gravel Company, 3 FMSHRC 2470 (November 1981). I find that there is no genuine issue as to any material fact; and that Respondent is entitled to summary decision as a matter of law. I, therefore, grant this motion and dismiss Contestant's discrimination complaint.

Arthur J. Amchan  
Administrative Law Judge  
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