

CCASE:  
ENERGY WEST MINE V. SOL (MSHA)  
DDATE:  
19931022  
TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
2 SKYLINE, 10th FLOOR  
5203 LEESBURG PIKE  
FALLS CHURCH, VIRGINIA 22041

ENERGY WEST MINE COMPANY, : CONTEST PROCEEDING  
Contestant :  
v. : Docket No. WEST 94-22-R  
: Order No. 3587924; 10/4/93  
SECRETARY OF LABOR, :  
MINE SAFETY AND HEALTH : Deer Creek Mine  
ADMINISTRATION (MSHA), : Mine ID 42-00121  
Respondent :

ORDER DENYING  
MOTION FOR EXPEDITED HEARING  
AND PREHEARING ORDER

On October 13, 1993, Energy West Mining Company, by counsel, filed a Notice of Contest of Order No. 3587924 issued on October 4, 1993, at the company's Deer Creek Mine by an inspector for the Mine Safety and Health Administration. The order was issued pursuant to Section 104(d)(1) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 814(d)(1). As part of the Notice, Contestant stated that "Energy West requests that an expedited hearing in this matter be held in Price, Utah."

Subsequently, on October 20, 1993, Energy West filed a Motion for Expedited Hearing in accordance with Commission Rules 10 and 52, 29 C.F.R. 2700.10 and 2700.52. Energy West asserts that it requests an expedited hearing on the contested order "because the order put Energy West on the 104(d) unwarrantable failure 'chain' which imposes a continuing threat of closure under 104(d)(2)." Contestant avers that the only issue in this case is whether the alleged violation resulted from an unwarrantable failure to comply with the Secretary's regulations.

The Secretary of Labor, by counsel, opposes the motion. The Secretary argues that "[a]n expedited hearing is an extraordinary remedy that is not to be given to the operator just for the asking" and that in this case Energy West has presented no basis for expediting the hearing. He points out that Energy West is in no different position than any other mine operator contesting a Section 104(d)(1) withdrawal order.

The Secretary's point is well taken. Energy West is not in a unique position. Every mine operator contesting a Section 104(d)(1) order is under "a continuing threat of closure under 104(d)(2)." For that matter, every mine operator receiving citation under Section 104(d)(1) faces the possibility of a subsequent withdrawal order.

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More is required to justify an expedited hearing. In two similar cases, Commission Administrative Law Judges William Fauver and John J. Morris also denied requests for expedited hearing. *Pittsburg & Midway Coal Mining Company v. Secretary of Labor*, 14 FMSHRC 2136 (December 1992) and *Medicine Bow Coal Company v. Secretary of Labor*, 12 FMSHRC 904 (April 1990). I find their reasoning persuasive.

Accordingly, the request for expedited hearing is DENIED.

However, having determined that an expedited hearing will not be held does not mean that this proceeding cannot be handled with dispatch. Therefore, in accordance with the provisions of Section 105(d) of the Act, 30 U.S.C. 815(d), the proceeding will be called for hearing on the merits at a time and place to be designated in a subsequent notice.

1. On or before November 19, 1993, the parties shall confer for the purpose of discussing settlement and stipulating as to matters not in dispute. If a settlement is reached, a motion for its approval shall be filed by the Secretary of Labor no later than November 19, 1993.

2. If settlement is not agreed upon, the parties shall send to each other and to me no later than November 19, 1993, synopses of their expected legal arguments, expected proof, lists of exhibits that may be introduced, and matters to which they can stipulate at the hearing. Each party shall also state its best estimate of the length of time necessary to present its case at the hearing.

3. Failure by any party to comply with this order will subject the party in default to a show cause order and possible default decision.

T. Todd Hodgdon  
Administrative Law Judge

Distribution:

Timothy M. Biddle, Esq., Thomas C. Means, Esq., Crowell & Moring,  
1001 Pennsylvania Ave., N.W. Washington, D.C. 20004

Carl Charneski, Esq., Office of the Solicitor, U.S. Department of  
Labor, 4015 Wilson Blvd., Suite 400, Arlington, VA 22203

Representative of Miners, Deer Creek Mine, P.O. Box 310,  
Huntington, UT 84528

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