

CCASE:

D. E. DEROSSETT V. MARTIN COUNTY COAL

DDATE:

19940502

TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

DOUGLAS E. DEROSSETT, : DISCRIMINATION PROCEEDING
Complainant :
v. : Docket No. KENT 94-278-D
: MSHA Case Nos. PIKE CD 93-10
MARTIN COUNTY COAL CORP., : PIKE CD 93-20
Respondent :
: Diamond No. 1 Mine

ORDER OF PARTIAL DISMISSAL

Appearances: Douglas E. DeRossett, Allen, Kentucky, pro se;
Diane M. Carlton, Esq., Stoll, Keenon and Park,
Lexington, Kentucky, for Respondent.

Before: Judge Melick

On May 19, 1993 and on July 29, 1993, pursuant to Section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, et seq., the "Act," Complainant DeRossette filed separate complaints of discrimination with the Department of Labor's Mine Safety and Health Administration (MSHA) alleging separate and distinct factual circumstances (MSHA Case Nos. PIKE CD 93-10 and PIKE CD 93-20, respectively).(Footnote 1) On December 11, 1993, DeRossett filed a complaint with this Commission which, although not an example of clarity, made reference to both of the above MSHA cases. DeRossett has failed, however, after many opportunities, to produce any correspondence from the Secretary (or MSHA) finding no violation of the Act in regard to these complaints. He did not do so in his original complaint before this Commission, nor in response to the specific request for such correspondence in Chief Judge Merlin's Order dated December 16, 1993, nor in response to the Show Cause Order issued February 16, 1994, nor at the hearing on the Respondent's Motion to Dismiss held April 26, 1994.

1 Section 105(c)(2) provides, in part, as follows:

"Any miner or applicant for employment of representative of miners who believes that he has been discharged, interfered with, or otherwise discriminated against by any persons in violation of this subsection may, within 60 days after such violation occurs, file a complaint with the Secretary alleging such discrimination."

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Section 105(c)(3) of the Act provides, in part, as follows:

Within 90 days of the receipt of a complaint filed under paragraph (2), the Secretary shall notify, in writing, the miner, applicant for employment, or representative of miners of his determination whether a violation has occurred. If the Secretary, upon investigation, determines that the provisions of this subsection have not been violated, the complainant shall have the right, within 30 days of notice of the Secretary's determination, to file an action in his own behalf before the Commission, charging discrimination or interference in violation of paragraph (a).

In the absence of evidence that the Secretary has issued such notification, this Commission is, therefore, without jurisdiction to proceed under that section of the Act.

Since Respondent produced at hearing from its own files a copy of MSHA's letter dated November 22, 1993, finding no violation of the Act regarding its Case No. PIKE CD 93-20, I find that the jurisdictional prerequisites have been met for that part of DeRossett's Complaint before this Commission under Section 105(c)(3). In the absence of any evidence of such a letter relating to the complaint under MSHA Case No. PIKE CD 93-10, I do not find that the jurisdictional prerequisite has been met for that complaint. Accordingly, that part of the complaint before this Commission that is based upon the allegations set forth in MSHA Case No. PIKE CD 93-10 is therefore DISMISSED. A hearing limited to the four corners of the complaint initially filed under MSHA Case No. PIKE CD 93-20 will accordingly be scheduled in the near future.

Gary Melick
Administrative Law Judge
703-756-6261

Distribution:

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