

CCASE:  
WILLIAM T SINNOTT V. JIM WALTER RESOURCES  
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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FALLS CHURCH, VIRGINIA 22041

WILLIAM T. SINNOTT, II, : DISCRIMINATION PROCEEDING  
Complainant :  
v. : Docket No. SE 94-358-D  
: :  
JIM WALTER RESOURCES, INC., : BARB CD 94-09  
Respondent :  
: No. 5 Mine

ORDER OF DISMISSAL

Before: Judge Maurer

This proceeding concerns a complaint of discrimination filed by the complainant (William T. Sinnott, II) against Jim Walter Resources, Inc. (JWR) pursuant to section 105(c) of the Federal Mine Safety and Health Act of 1977 (the Mine Act).

On August 23, 1994, JWR filed a Motion for Summary Decision (which I am treating as a Motion to Dismiss), alleging, inter alia, that the instant complaint is barred by the statute of limitations and by laches. Subsequently, on September 26, 1994, the undersigned issued an Order to Show Cause to the complainant to explain why his complaint should not be dismissed because of his failure to timely file his section 105(c) complaint with the Mine Safety and Health Administration (MSHA).

A chronology of the significant events which gave rise to the instant complaint is as follows:

- July 17, 1989 - Complainant is first employed by JWR as an Associate Production Engineer.
- February 12, 1990 - Complainant placed on medical leave for treatment of ulcers and mental illness.
- May 14, 1990 - Complainant returned to duty.
- August 21, 1990 - Complainant terminated from his employment at JWR.
- February 10, 1991 - Complainant files a complaint with the Office of Federal Contract Compliance Programs (OFCCP) under the Rehabilitation Act of 1973, alleging that JWR violated the nondiscriminatory and affirmative action

provisions of its federal contract by terminating him because of his handicap, mental illness.

- February 12, 1992 - OFCCP makes an initial finding of "no violation" in the complaint he filed under section 503 of the Rehabilitation Act of 1973.
- August 5, 1993 - Complainant's request for reconsideration is finally denied by OFCCP.
- November 29, 1993 - Complainant files the instant complaint with MSHA alleging that JWR violated the nondiscriminatory provisions of the Mine Act by terminating him in retaliation for his refusal to follow a direct order that he believed was harmful and would have placed his life in imminent danger.
- March 22, 1994 - MSHA notifies complainant that they have determined "no violation" of section 105(c) of the Mine Act has occurred.
- April 28, 1994 - FMSHRC receives complaint at bar.

The critical two dates for purposes of this motion are August 21, 1990, the date of termination, and November 29, 1993, the date the section 105(c) complaint was filed with MSHA. As the respondent complains of in his motion, the complainant failed to initiate his complaint under the Mine Act until some 3 years and 3 months after the alleged discriminatory activity occurred.

Section 105(c)(1) of the Act prohibits any discrimination against a miner, including discharge, because of the miner's making safety complaints or his justifiable refusal to perform an assigned task which he reasonably believes to be unsafe.

In accordance with section 105(c)(2) of the Mine Act any miner who believes he has been discharged or discriminated against may, within 60 days of the alleged act of discrimination, file a complaint with the Secretary of Labor. The Secretary is then required to conduct an investigation and make a determination as to whether or not a violation of section 105(c) has occurred. If the Secretary determines that the miner's allegations of discrimination are valid and a violation has occurred, he is required to file a complaint on the miner's behalf with the Commission.

Pursuant to section 105(c)(3) of the Act, if the Secretary determines that a violation of section 105(c) has not occurred, he must so inform the miner, and the miner then has a right to file a complaint on his own behalf with the Commission within 30 days of notice of the Secretary's determination.

Ordinarily, when dealing with late-filings of a few days or even a few months, the Commission has determined that the time limits in sections 105(c)(2) and (3) "are not jurisdictional" and that the failure to meet them should not result in dismissal, absent a showing of "material legal prejudice." See, e.g., Secretary on behalf of Hale v. 4-A Coal Co., 8 FMSHRC 905, 908 (June 1986). However, in that same decision, the Commission also stated that "[t]he fair hearing process envisioned by the Mine Act does not allow us to ignore serious delay. . . ." Here, we are dealing with an extraordinarily late filing in excess of 3 years. At some point there has to be an outer limit, if the 60-day rule contained in the statute has any meaning at all.

In *David Hollis v. Consolidation Coal Company*, 6 FMSHRC 21 (January 9, 1984), aff'd mem., 750 F.2d 1093 (D.C. Cir. 1984) (table), the Commission affirmed a dismissal of a miner's discrimination complaint filed 6 months after his alleged discriminatory discharge. The Commission stated that "timeliness questions must be resolved on a case-by-case basis, taking into account the unique circumstances of each situation," 6 FMSHRC 24.

In that case, the judge below concluded that Hollis knew, or had reason to know, of his section 105(c) remedies within the 60-day period following his discharge; but like Sinnott, elected to seek another avenue of relief (the West Virginia Human Rights Commission, charging discrimination against a racial minority), before filing his section 105(c) complaint over 4 months past the Act's 60-day time limit.

The Commission, reviewing this ALJ finding, stated that: "We do not believe that Congress. . . intended for us to excuse a miner's late-filing where the miner has invoked the aid of other forums while knowingly sleeping on his rights under the Mine Act." 6 FMSHRC 25.

I should also note that in that case, Judge Melick found that the fact that Hollis had completed two years of college reflected positively on his ability to understand his rights under the Mine Act. In the case at bar, the more so. Mr. Sinnott is a college graduate, having received his Mining Engineering degree from the University of Missouri-Rolla in May 1988. While attending the University, he also worked summer jobs for various coal companies and upon graduation went to work for Western Fuels-Utah as an Operations Engineer prior to his relatively short stint of employment with JWR. It is readily

~2448

apparent that he is a man of ample intelligence with experience in the coal industry. Moreover, he has demonstrated the ability, with assistance of legal counsel, to pursue another complex complaint concerning this same employment matter with the OFCCP.

It should also be noted that Mr. Sinnott does not claim ignorance of the filing requirements of the Mine Act. Rather, Mr. Sinnott's claim is that his late-filing should be excused because he did not know why he was discharged at the time. He states that at the time of his termination he believed that he was being discharged because of his mental illness and because of "acting strange." It was only later, after the OFCCP case was concluded (and lost) that he came to believe that he was discharged in violation of the Mine Act. The trouble with this theory as an excuse for late-filing is that it is universal. An operator rarely (never) puts a miner on official notice that he is being discharged in violation of the Mine Act or because he made safety complaints or because he justifiably refused to perform an unsafe task. As a matter of practice, it is up to the miner to know that he has engaged in protected activity and to suspect, at least, that the adverse action he has suffered, is somehow connected with that protected activity. One cannot expect the operator to provide official notice to the prospective complainant that they have just violated the Mine Act as a precondition to starting the clock running on the 60-day rule.

Under the circumstances, I conclude that Mr. Sinnott knew or at least should have known of his right to file a complaint with MSHA under section 105(c) of the Mine Act at the time of his August 1990 termination, and that therefore his seriously late-filed complaint herein cannot be excused for "justifiable circumstances." The complaint was filed over 3 years out of time. Since then, another year has passed. After an extraordinary delay of over 4 years since the matters complained of occurred, it is highly questionable whether the other company employees who might have had some knowledge of the events surrounding Mr. Sinnott's termination would have a present recollection of those events. Generally, I find that a 3-plus year delay in charging the respondent with what specifically it did or failed to do in violation of the Mine Act is inherently prejudicial to an operator's ability to defend itself against the allegations contained in the complaint. It can hardly be disputed that JWR would have been in a much better position to investigate and defend against the allegations made in the complaint had the filing deadline been met by Mr. Sinnott. "[E]ven if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitations and. . . the right to be free of stale claims in time comes to prevail over the right to prosecute them." *Herman v. IMCO Services*, 4 FMSHRC 2135, 2138-39 (Dec. 1982) (emphasis added). In that case, Herman, a senior project engineer, was terminated

~2449

in April of 1979. He delayed filing any complaint until March 1980. When he did file, he filed with the Nevada Department of Occupational Safety and Health, who referred the matter to MSHA. Thus, the discrimination complaint in the case was filed 9 months after the expiration of the time period specified in the statute regarding the filing of such complaints, i.e., 60 days. The Commission affirmed the ALJ's decision, which found no justifiable circumstances to excuse what they termed, "Herman's egregious delay in instituting this proceeding."

Like the miner in Herman, Sinnott's protracted delay in filing a complaint with MSHA cannot be attributed to his being misled as to or a misunderstanding of his rights under the Mine Act. And, like the miner in Hollis, Sinnott pursued an alternative avenue of relief, and not until he lost that claim did he file the subject complaint.

Accordingly, complainant's initial complaint filed with MSHA on November 29, 1993, is found to be excessively stale and will be dismissed herein.

ORDER

In view of the foregoing, the complainant's complaint of discriminatory discharge under the Mine Act is found to have been untimely filed and on this basis, the respondent's motion to dismiss this case is GRANTED and the complaint is DISMISSED.

Roy J. Maurer  
Administrative Law Judge

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