

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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October 2, 2014

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA), on behalf
of REGALD ROBBINS,
Complainant,

v.

ALDEN RESOURCES, LLC,
Respondent.

TEMPORARY REINSTATEMENT
PROCEEDING

Docket No. KENT 2014-594-D
BARB-CD-2014-04

Mine ID: 15-17691
Mine: Mine #3

ORDER ON MOTION TO TOLL TEMPORARY REINSTATEMENT ORDER

This case is before me upon an application for temporary reinstatement pursuant to section 105(c)(2) of the Federal Mine Safety and Health Act of 1977 “(Mine Act”), 30 U.S.C. § 815(c). On July 28, 2014, I granted the Secretary’s *Motion for Temporary Reinstatement* after a hearing conducted in Louisville, Kentucky on July 22, 2014.

On September 19, 2014, Respondent filed a *Motion to Toll Temporary Reinstatement Order*, informing me that the mine where Complainant is employed is in a temporary shutdown and that while several personnel remained on the payroll, 44 of the miners, including Complainant, were informed that they were to be laid off on September 8, 2014.

On September 29, 2014, the Secretary filed a response to Respondent’s motion stating that the Complainant did not wish to oppose Respondent’s motion.

On October 2, 2014, I held a telephone conference with the parties to hear further argument on the motion. Mr. Shelton explained that the shutdown related to the recent discovery that the mine was no longer producing low ash coal, and that the temporary shutdown was needed to determine whether the mine might yield more low ash coal after further production. The mine is conducting drilling operations to make an assessment as to the viability of further production. No decision has been made by Respondent on the likelihood that the mine will return to the production of low ash coal in the near future. Both Mr. Opegard and Ms. Gregory represented that Complainant did not oppose the motion.

As Complainant does not oppose the motion, *Respondent’s Motion to Toll Temporary Reinstatement Order* is **GRANTED**. The tolling is **effective September 8, 2014**, and shall remain in effect until future Order of this Court.

In granting the motion, I **HEREBY ORDER** that Respondent file with me a status report on the investigation of the future production of the mine and any information related to potential re-opening of the mine **every thirty days** commencing on **November 1, 2014**.

If the mine returns to operation at any time, it is **HEREBY ORDERED** that Complainant be returned to his position **immediately upon the commencement of operations**. Absent good cause, none of the other miners laid off as the result of the above described action shall take precedence over Complainant upon the return to mining operations at the mine.



James G. Gilbert
Administrative Law Judge

Distribution: (*Electronic email*)

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