

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
1331 Pennsylvania Avenue, NW, Suite 520N
Washington, DC 20004

October 29, 2015

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
Petitioner,

v.

DOMINION COAL CORPORATION,
Respondent.

CIVIL PENALTY PROCEEDING

Docket No. VA 2015-285

Mine: Dominion No. 7
Mine ID: 44-06499

**STAY ORDER PENDING ULTIMATE DISPOSITION
OF UNDERLYING DISCRIMINATION PROCEEDING**

Before: Judge Feldman

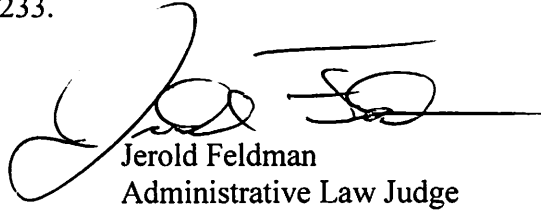
This proceeding is before me based upon a petition for assessment of civil penalty filed by the Secretary on July 24, 2015, pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977 (the Act). 30 U.S.C. § 815(d). The Secretary seeks to impose a civil penalty of \$12,500.00 as a consequence of a June 11, 2015, Decision on Liability in a 105(c)(3) discrimination proceeding, docketed as VA 2014-233, which concluded that Dominion Coal Corporation (“Dominion”) was liable for a violation of section 105(c) of the Act when it interfered with Scott D. McGlothlin’s rights under Part 90 of the Act. *McGlothlin v. Dominion Coal Corp.*, 37 FMSHRC 1256 (June 2015) (ALJ).

On September 2, 2015, the parties in Docket No. VA 2014-233 filed a Joint Motion to Dismiss McGlothlin’s complaint in light of the parties’ proposed agreed-upon relief. The parties’ Joint Motion to Dismiss was predicated upon McGlothlin’s agreement that “the parties jointly move the Court to dismiss all claims in this action with prejudice,” in exchange for Dominion’s agreement to the relief, including attorney fees, sought by McGlothlin. On October 21, 2015, the parties’ request to dismiss McGlothlin’s complaint was denied because it was contingent on proposed settlement terms that seek to release Dominion from an adjudicated finding of liability in a Commission proceeding.¹ Thus, while the appropriate relief to be awarded to McGlothlin in Docket No. VA 2014-233 is yet to be determined, Dominion will be precluded from denying liability in this civil penalty proceeding brought by the Secretary

¹ Although the Decision on Liability is not final in that the judge retains jurisdiction under Commission Rule 69(b), a decision on liability is an interlocutory decision that may be appealed or reviewed, subject to the discretion of the Commission, pursuant to the provisions of Commission Rule 76(a). 29 C.F.R. §§ 2700.69(b), 2700.76(a). However, the parties may not mutually agree to “vacate” an interlocutory liability decision.

based on the doctrine of collateral estoppel, unless the Decision on Liability is ultimately vacated by the Commission.

As such, in view of the above, **IT IS ORDERED** that the captioned docket **IS STAYED** pending the ultimate resolution of the issue of Dominion's liability for violation of section 105(c) of the Act in Docket No. VA 2014-233.



Jerold Feldman
Administrative Law Judge

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