

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

**JAN 09 2019**

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

v.

ALLEGHENY MINERAL  
CORPORATION,  
Respondent.

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

v.

ALLEGHENY MINERAL  
CORPORATION,  
Respondent.

DISCRIMINATION PROCEEDING

Docket No. PENN 2018-0158-DM  
MSHA No. NE MD 2018-01

Mine: Bison Mine  
Mine ID: 36-10107

CIVIL PENALTY PROCEEDING

Docket No. PENN 2018-0275

Mine: Bison Mine  
Mine ID: 36-10107

**ORDER SCHEDULING PREHEARING  
TELEPHONE CONFERENCE**

Before: Judge Feldman

The captioned matters were severed in an Order that established and severed newly created Docket No. PENN 2018-0275 concerning the Secretary's civil penalty proceeding from Docket No. PENN 2018-0158-DM that is limited to issues concerning the merits of Wylie's discrimination complaint and his claim for relief. Severance Order, 40 FMSHRC \_\_\_, Slip op. at 4, (Oct. 23, 2018). These matters were severed as a consequence of the Secretary's withdrawal from the parties' verbal settlement agreement that would have resolved the issues of both the compensatory relief to be awarded to Wylie and the amount of the civil penalty to be paid in this matter. *Id.* at 2. Currently before me is Allegheny's Motion to Approve Settlement with Wylie that apparently concerns the identical settlement terms with respect to compensatory relief that were informally accepted but subsequently rejected by the Secretary. Allegheny's Agreement and Mot. to Approve Settlement at 3-4 (Nov. 21, 2018).

The record contains conflicting statements concerning whether Wylie has agreed to settle. In an email transmitted on September 28, 2018, Wylie unequivocally advised the Commission that he agreed to the settlement terms with regard to his monetary relief, and, that he was not interested in participating in a hearing. *See* Order Denying Sec’y’s Mot. for Recon., 40 FMSHRC \_\_\_, Slip op. at 2 (Nov. 8, 2018). Nevertheless, the Secretary now asserts that Wylie has rejected the settlement because, “[Wylie] has embraced [the] desire to serve the broader public purpose of deterring future discrimination and does not want his to be the test case allowing the routine confidential resolution [of] discrimination cases.” Sec’y’s Mot. to Recons. Severance Order at 5 (Oct 26, 2018). However, issues concerning deterrence go beyond the scope of the discrimination proceeding in Docket No. PENN 2018-0158-DM, which is limited to the issue of Wylie’s entitlement to monetary relief.

Commission Rule 4(a) provides, in pertinent part:

In a proceeding instituted by the Secretary under section 105(c)(2) of the Act, 30 U.S.C. [§] 815(c)(2), the complainant on whose behalf the Secretary has filed the complaint is a party . . . .

29 C.F.R. § 2700.4(a); *Sec’y of Labor v. Mountain Top Trucking Co.*, 18 FMSHRC 487, 488 (April 1996).

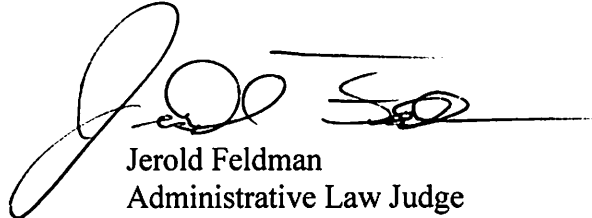
As a party, Wylie does not require the Secretary’s approval for his agreement to settle the issue of his monetary relief. Consequently, a telephone conference with Wylie, opposing counsel for Allegheny, and the Secretary will be scheduled so I can hear directly from Wylie whether he accepts the settlement terms with respect to the amount of his compensatory relief, or, whether Wylie chooses to pursue his claim of alleged discrimination through an evidentiary hearing. The telephone conference will be limited solely to the motion to approve settlement between Allegheny and Wylie in Docket No. PENN 2018-0158-DM. The telephone conference will not address the issues concerning deterrence-related sanctions that are the subject of Docket No. PENN 2018-0275.

The telephone conference will be recorded and transcribed. To preserve the pending nature of Allegheny’s request for confidentiality, the transcript of the telephone conference will be placed under seal.

**ORDER**

Consequently, consistent with the above, **IT IS ORDERED** that the captioned parties participate in a conference call scheduled for 2:00 p.m. on Tuesday, January 22, 2019. The parties will receive an email containing the information required to participate in the conference call.

Any procedural questions concerning the matters discussed herein should be directed to my Law Clerk, Noah Meyer, at nmeyer@fmshrc.gov or (202) 233-4010.

  
Jerold Feldman  
Administrative Law Judge

Distribution (by regular and certified mail):

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