

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
1331 Pennsylvania Avenue NW, Suite 520N
Washington, D.C. 20004

November 18, 2015

SCOTT D. MCGLOTHLIN,
Complainant,

v.

DOMINION COAL CORPORATION,
Respondent.

DISCRIMINATION PROCEEDING

Docket No. VA 2014-233-D
NORT-CD-2013-04

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

**ORDER DENYING PARTIES' REQUEST
FOR UNCONDITIONAL CONFIDENTIALITY**

Before: Judge Feldman

This matter is before me based on a Complaint of Discrimination brought by Scott D. McGlothlin against Dominion Coal Corporation (“Dominion”), pursuant to section 105(c)(3) of the Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 815(c)(3) (2006) (“Mine Act” or “the Act”). A consolidated Decision Granting Complainant’s Motion for Summary Decision and Decision on Liability, issued on June 11, 2015, resolved the liability at issue in this matter without the need for an evidentiary hearing. *McGlothlin v. Dominion Coal Corp.*, 37 FMSHRC 1256 (June 2015) (ALJ). That decision held that Dominion violated the anti-discrimination provisions of section 105(c) by interfering with McGlothlin’s right to pay protection under 30 C.F.R. Part 90 as a miner with pneumoconiosis, when Dominion reduced McGlothlin’s pay after McGlothlin sought a determination from the National Institute for Occupational Safety and Health (“NIOSH”) concerning his eligibility for Part 90 protection. *Id.* at 1264-1266.

On September 2, 2015, the parties filed a Joint Motion to Dismiss McGlothlin’s discrimination complaint based on their proposed agreement regarding the relief to be awarded to McGlothlin, including reimbursement of attorney fees. By an order dated October 21, 2015, the parties joint motion to dismiss was denied because it was contingent on the parties’ proposed terms releasing Dominion from an adjudicated finding of liability in a Commission proceeding. 37 FMSHRC __, slip op. at 5 (Oct. 21, 2015) (ALJ). The October 21, 2015, order noted that upon resubmission of the parties’ joint petition for relief, it is immaterial whether the parties’ agreement on relief is styled as a joint petition for relief, or, as a motion to approve settlement. *Id.*

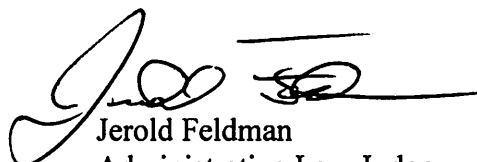
On November 11, 2015, the parties submitted a revised Joint Motion to Approve Settlement, which is substantively a joint petition for relief. To rectify the flaw in the previously-submitted terms for relief in which Dominion was absolved of liability, the parties now state that their proposed terms “include[] Dominion’s waiver of its right to appeal this Court’s Decision on Liability.”¹

Consistent with the October 21, 2015, order, the parties also submitted documentation to support McGlothlin’s proposed monetary relief, including detailed fee petitions to support McGlothlin’s claimed reimbursement of attorney fees in this matter. The parties have requested that the relief sought, as well as the supporting documentation, be kept confidential.

It is well-settled that oversight of proposed settlement terms (i.e. joint petitions for relief) in both section 105(c)(2) and (c)(3) discrimination proceedings is committed to the sound discretion of the trial judge, which may be ultimately subject to Commission approval. *Eastern Assoc. Coal Corp.*, 7 FMSHRC 2015, 2027 (Dec. 1985); *see also Reid v. Kiah Creek Mining Co.*, 15 FMSHRC 390 (March 1993); *Leeco, Inc.*, 20 FMSHRC at 707. Requests for confidentiality can be given effect in cases where the parties’ proposed terms of relief are adopted. However, public disclosure of the parties’ proposed terms may be required in instances where the parties’ proposed terms of relief, including attorney fees, are either disputed, or not approved by the judge. *See, e.g., Pendley v. Highland Mining Co. and James Creighton*, 37 FMSHRC __ slip op. (Sept. 21, 2015) (ALJ). As the parties’ proposed relief is currently subject to review, the confidentiality requested by the parties cannot be unconditionally guaranteed.

ORDER

In view of the above, **IT IS ORDERED** that the parties’ request for unconditional confidentiality **IS DENIED**.


Jerold Feldman
Administrative Law Judge

¹ In view of Dominion’s decision not to appeal the Decision on Liability, the parties’ proposed relief must be considered as a joint petition for relief, as there is a substantive difference regarding whether the parties’ proposed terms are viewed as a motion to approve settlement, or as a joint petition for relief. In exercising oversight over motions to approve settlement, Commission judges’ authority is limited to only approving or denying the settlement terms. Thus, the judge lacks the authority to impose his terms, rather than those proposed by the parties. In contrast, as Dominion has waived its right to appeal the Decision on Liability, the appropriate relief to be awarded in this matter will be determined in a forthcoming decision on relief. As such, the issue of the appropriate monetary relief remains committed to the sound discretion of the judge. *Secretary of Labor on behalf of Maxey v. Leeco, Inc.*, 20 FMSHRC 707, 707 (July 1998).

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