

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

January 21, 2015

SCOTT 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 EXTENDING DISCOVERY DEADLINE
AND
ORDER GRANTING, IN PART, COMPLAINANT'S REQUEST FOR DEPOSITIONS

This Order concerns counsel for McGlothlin's requested depositions of Dave Addair, Bobby Winchester, James Stacey, Aaron Stillwell, and Stephen Johnson. The hearing in this matter is set for February 24, 2015. The discovery deadline is currently set for Friday, January 23, 2015.

On or about January 16, 2015, counsel for McGlothlin advised Dominion Coal Corporation's (Dominion) counsel that they wished to depose Addair, Winchester, and Stacey, the following week. Dominion's counsel has represented that they are unable to accommodate the last-minute request to depose these individuals because of scheduling conflicts. Consequently, by an email dated January 20, 2015, I urged the parties to agree on a mutually-acceptable extension to the date for completion of discovery. Counsel for Dominion replied on January 20, 2015, that it does not agree to an extension of the discovery deadline. In an email dated January 21, 2015, I provided Dominion with the opportunity to voluntarily agree to an extension of the discovery date to February 10, 2015, in lieu of issuing a formal order. The email also urged Dominion to voluntarily cooperate to effectuate the timely completion of depositions of Addair, Winchester, and Stacey.

This afternoon, on January 21, 2015, in response, Dominion stated that it "does not agree to extend the discovery deadline until February 10, 2015 ... without a demonstration of good cause, which in our professional opinion does not exist here." Having declined to voluntarily agree to an extension of the discovery date, as noted in my previous email, I will accommodate counsel for Dominion's scheduling conflict by extending the date for completion of discovery. **Accordingly, the discovery deadline is extended to February 10, 2015.**

Additionally, counsel for McGlothlin has disclosed that he intends to call Stillwell and Johnson as minor witnesses. Counsel for McGlothlin seeks to depose these individuals because counsel for Dominion has obtained sworn information from them. In essence, counsel for McGlothlin seeks to depose his own witnesses. Consequently, McGlothlin's request for subpoenas to depose Aaron Stillwell and Stephen Johnson **SHALL BE DENIED**.

ORDER


In view of the above, **IT IS ORDERED** that McGlothlin's request to depose Aaron Stillwell and Stephen Johnson **IS DENIED**.

IT IS FURTHER ORDERED that the depositions of Dave Addair, Bobby Winchester, and James Stacey be taken on or before **February 10, 2015**.

IT IS FURTHER ORDERED that Dave Addair, Bobby Winchester, and its former employee James Stacey, be made available for deposition prior to February 10, 2015. If Dominion cannot ensure the attendance of its former employee, it should provide McGlothlin with Stacey's last known address and contact information, according to its employee records, prior to **January 28, 2015**.

Dominion's failure to abide by this Order may result in an order to show cause, seeking to determine why a default judgment, based on the relief sought by McGlothlin, should not be issued in this matter.

IT IS FURTHER ORDERED that the deadline for filing and exchanging Prehearing Reports, referenced in the November 14, 2014, Notice of Hearing, be extended to **February 14, 2015**.



Jerold Feldman
Administrative Law Judge

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