

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

February 8, 2016

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 COMPLAINANT'S  
MOTION FOR INTERLOCUTORY REVIEW**

Before: Judge Feldman

Before me is a motion filed on February 5, 2016, by Scott D. McGlothlin's counsel requesting certification for the Commission's interlocutory review. Certification of a request for interlocutory review requires a showing that the request for review involves a novel question of law, and that immediate review will materially advance the final disposition of the proceeding. 29 C.F.R. § 27.0076 (a)(1)(i). McGlothlin's counsel seek interlocutory review with regard to the question of: Whether the parties' proposed agreement on relief in a section 105(c)(3) proceeding, with respect to damages and reimbursement of attorney fees, precludes Commission evaluation of the reasonableness of the agreed upon relief.

Section 105(c)(3) states, in pertinent part:

. . . [in] granting such relief as [the Commission] deems appropriate, [the Commission shall award] . . . a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) *as determined by the Commission to have been reasonably incurred by the miner.* . . .

30 U.S.C. § 815(c)(3) (emphasis added).

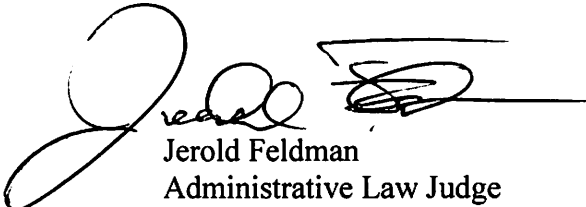
Section 105(c)(3) provides that only reasonable attorney fees may be awarded to complaints' counsel. Attorney fees are awarded by order the Commission, through force of law, pursuant to the fee shifting provisions of section 105(c)(3). McGlothlin's counsel's assertion that their proposed agreement on relief precludes Commission review of the reasonableness of their claimed attorney fees is contrary to the plain statutory language. Moreover, it is well settled that the authority to review and approve proposed settlements in Commission cases has been delegated to the sound discretion of the Commission and may not be ceded to the parties'

because of their mutual agreement. The Commission has held that its delegated authority to approve settlements applies to proposed agreements offered in section 105(c) discrimination proceedings. *Sec'y of Labor o/b/o Maxey v. Leeco, Inc.*, 20 FMSHRC 707, 707 (July 1998).

In fact, the Commission routinely considers requests for settlement terms proffered by the parties in Commission proceedings. Obviously, it is the parties' agreement that is the predicate for the exercise of the Commission's authority to approve their settlement terms. The suggestion that the Commission is obliged to accept settlement terms is anathema to the Commission's settlement oversight authority. McGlothlin's counsel's assertion cannot be reconciled with the relevant statutory language and case law. In short, the Commission's authority to review proposed agreements on relief in section 105(c)(3) proceedings is well established. Consequently, McGlothlin's counsel have failed to identify the requisite novel question of law necessary to grant their request for certification for interlocutory review.

With regard to the second element required for certification for interlocutory review, granting the review sought by McGlothlin's counsel will not materially advance the final disposition of this matter, as the Decision on Relief, which follows the Decision on Liability, 37 FMSHRC 1256 (June 2015) (ALJ), both of which constitute the final disposition of this discrimination matter, is being released concurrently with this Order. To grant interlocutory review at this juncture would delay, rather than expedite, the final disposition of this proceeding, which has now occurred.

Accordingly, **IT IS ORDERED** that McGlothlin's counsel's Motion for Interlocutory Review **IS DENIED**.



Jerold Feldman  
Administrative Law Judge

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