

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

April 17, 2017

ROBERT C. HALL,
Complainant

v.

GMS MINE REPAIR & MAINTENANCE,
INC.,
Respondent

DISCRIMINATION PROCEEDING

Docket No. PENN 2016-228-D
MSHA Case No. PITT-CD-2016-01

Mine: Emerald No. 1
Mine ID: 36-05466 MVK

DISMISSAL ORDER

Before: Judge Feldman

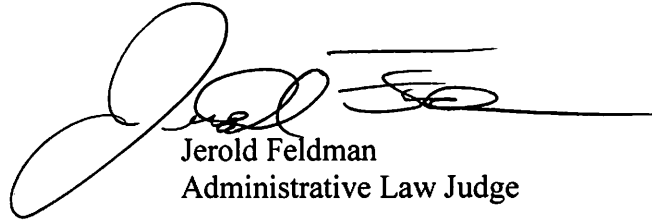
This matter is before me based on a May 10, 2016, Complaint of Discrimination filed by Robert C. Hall against GMS Mine Repair & Maintenance, Inc. (“GMS”), pursuant to section 105(c)(3) of the Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 815(c)(3) (2006) (“Mine Act” or “the Act”).¹ Hall’s employment as a Sales, Services, Field and Development Engineer with GMS was terminated on January 25, 2016, contemporaneous with a widespread company layoff. GMS is a contractor that provides construction and maintenance services at mines. Hall’s complaint is based on his allegation that he was not subsequently reinstated as a consequence of his disagreement with GMS management concerning the beneficial explosive characteristics of AutoStem, as compared to NXBurst. AutoStem and NXBurst are two competing explosives products, apparently neither of which has yet been approved by MSHA.

This matter was scheduled for an April 25, 2017, hearing. During the course of telephone conferences held with the parties in preparation for the hearing, the parties advised that Hall has a pending related civil suit against GMS in which he seeks to recover alleged past-due compensation.

On April 4, 2017, Hall filed a Motion to Dismiss this proceeding without prejudice, reportedly for the purpose of allowing him to “further pursue the matters alleged herein in any court or tribunal which may be available to me as a matter of law.” *Mot. to Dismiss*, at 1 (Apr. 4, 2017). Hall represents that GMS does not object to dismissal of Hall’s complaint without prejudice.

¹ Hall’s Complaint of Discrimination, which serves as the jurisdictional basis for this matter, was filed with the Secretary on April 5, 2016, in accordance with section 105(c)(2) of the Mine Act. Hall’s complaint was investigated by the Secretary’s Mine Safety and Health Administration (“MSHA”). On April 22, 2016, MSHA advised Hall that the investigation did not disclose any section 105(c) violations.

In view of the above, **IT IS ORDERED** that Hall's Motion to Dismiss **IS GRANTED** and the captioned discrimination proceeding in Docket No. PENN 2016-228 **IS DISMISSED** without prejudice.²



Jerold Feldman
Administrative Law Judge

Distribution:

Robert C. Hall, 116 Cedar Lane, Houston, PA 15342

William C. Means, GMS Mine Repair & Maintenance, Inc., 224 Moyers Road, Bruceton Mills, WV 26525

/acp

² Although Hall's discrimination complaint has been dismissed without prejudice, section 105(c)(3) of the Mine Act requires complainants bringing discrimination actions in their own behalf to file such complaints within 30 days of the Secretary's notification that his investigation did not disclose any violations of the anti-discrimination provisions of section 105(c). 30 U.S.C. § 815(c)(3). As previously noted, on April 22, 2016, the Secretary advised Hall of his investigation findings that no discrimination occurred. Thus, while Hall may subsequently elect to refile his discrimination complaint, it may be precluded as untimely.