

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
1331 PENNSYLVANIA AVENUE, N.W., SUITE 520N
WASHINGTON, D.C. 20004-1710
TELEPHONE: (202) 434-9950 / FAX: (202) 434-9949

July 1, 2015

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. CENT 2014-298-M
Petitioner,	:	A.C. No. 13-02285-344601
	:	
v.	:	
	:	
JEPPESEN GRAVEL,	:	Mine: Jeppesen Pits
Respondent.	:	

ORDER ON MOTION FOR SANCTIONS

Before: Judge Rae

This case is before me upon a petition for assessment of a civil penalty under section 110(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 820(c).

On April 24, 2015 I issued an Order compelling Respondent to answer the Secretary’s first and second set of discovery requests in this docket. His answers were due two weeks from the date of my Order. Respondent provided 23 exhibits including his income tax returns for the past two years in response. The Secretary has now filed a Motion for Sanctions for Jeppesen’s failure to respond to discovery. He seeks sanctions for Respondent’s failure to respond fully to his interrogatories, requests for admission, and requests for production of documents. Respondent has responded to this motion by email stating they “do not want to go with sanctions.”

For the reasons set forth below, I DENY the Secretary’s motion but limit the evidence the Respondent shall be permitted to produce at trial.

This docket involves eighteen 104(a) citations issued for alleged violations existing as a result of the Respondent’s alleged failure to abate certain conditions after MSHA had issue prior citations and withdrawal or removal from service orders under 104(b) of the Mine Act.

Jeppesen is a *pro se* litigant who through his various pleadings and responses to motions appears to be relatively unsophisticated from a legal standpoint. He operates a small mine in which he claims he is the sole employee and has limited financial means.

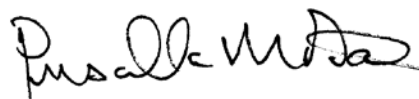
The Secretary has propounded three sets of discovery – 28 interrogatories (not including subparts, in violation of Federal Rule of Civil Procedure 33), 38 requests for admission, and 12 requests for production of documents/videos in all. Each of the discovery requests seeks multiple answers, admissions and documents for each of the 18 non-significant and substantial

alleged violations. In addition to propounding the third request for production after my Order of April 24th, the Secretary sent a letter by email to Jeppesen on May 28, 2015 informing the Respondent that pursuant to my previous Order, the Secretary is entitled to this information. The Secretary further informed the Respondent that they did not consider his responses to their discovery sufficient and that the Secretary would be compelled to file a motion for sanctions should he not fully comply. In fact, the Secretary is not entitled to any relief with respect to this last request for production as it was served after my Order to Compel and the Secretary has not filed a Motion to Compel this information. That is not to say I would grant it, however.

The Secretary has also filed with the Court a Prehearing Report containing 500 pages of pre-trial exhibits including copious inspector's notes on each violation, glossy colored photographs, quarterly employee reports, a U.S. District Court consent judgement against Jeppesen, a previous ALJ decision approving settlement of several of the prior citations issued for the same conditions herein¹ and a prior ALJ's decision against Jeppesen.

FMSHRC Rule 56(c) provides that upon a judge's own motion, the judge may limit discovery to protect a party or person from oppression or undue delay, burden or expense. *See* 29 C.F.R. § 2700.56(c). Federal Rule of Civil Procedure 26(c) states that a Court may issue an order to protect a person from undue burden or expense by limiting the scope of discovery. I find that the Respondent has complied, to the extent of his abilities, with the Secretary's discovery. I further find that requiring the Respondent to provide additional responses to the Secretary's overzealous requests would be unduly burdensome and oppressive. It would not lead to information not already at the disposal of the Secretary or necessary for presentation of his case. It would also lead to undue delay as the trial is scheduled to commence in less than two weeks.

I hereby **DENY** the Secretary's motion for sanctions. I do, however, acknowledge that Jeppesen has allegedly demonstrated a reluctance to cooperate with MSHA and the Secretary. I therefore **ORDER** that Jeppesen be limited to the introduction at trial of only that evidence that has been provided to the Secretary or the Court in response to discovery or my Notice of Hearing Order, absent good cause shown.



Priscilla M. Rae
Administrative Law Judge

Distribution:

Robert Alan Kelly, Esq., U.S. Department of Labor, Office of the Solicitor, Two Pershing Square, 2300 Main Street, Suite 1020, Kansas City, MO 64108

Jay A. Jeppesen, Jeppesen Gravel, 719 8th Street, Sibley, IA 51249

¹ The Secretary filed a Motion for Partial Summary Judgement. He argued that because Jeppesen had settled several of the previous citations for the same condition or had failed to respond to admissions concerning the citations involved, they were entitled to a summary decision. I denied that motion.