

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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WASHINGTON, DC 20004
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JUL 20 2015

MARK L. LUJAN,

Complainant,

v.

SIGNAL PEAK ENERGY, LLC,
Respondent.

TEMPORARY REINSTATMENT:

Docket No. WEST 2015-765-D
MSHA Case No. DENV-CD 2014-17

Mine ID: 24-01950
Mine: Bull Mountain Mine No. 1

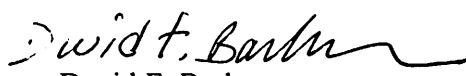
ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On July 10, 2015, the Commission received a request for temporary reinstatement from Mark L. Lujan. On July 20, 2015, the court received the company's response and motion to dismiss. The company essentially argues the Commission is without jurisdiction. Because I agree, I will grant the company's motion without waiting for Mr. Lujan's reply.

Mr. Lujan formerly worked as a miner for Signal Peak Energy, LLC at the company's Bull Mountain Mine No. 1, an underground bituminous coal mine located in south central Montana. Mr. Lujan contends that he was illegally discharged by the company on June 18, 2013. On September 24, 2014, Mr. Lujan filed a discrimination complaint with the Secretary of Labor's ("Secretary") Mine Safety and Health Administration ("MSHA"). On November 24, 2014, MSHA sent Mr. Lujan a letter informing him that it did not find sufficient evidence to establish a violation of section 105(c). 30 U.S.C. § 815(c). Mr. Lujan then filed an "appeal" of MSHA's determination. The appeal was docketed by the Commission as a section 105(c)(3) (30 U.S.C. § 815(c)(3)) discrimination complaint (Docket No. WEST 2015-252-D), and the case was assigned to the court. Time was provided for Mr. Lujan to obtain counsel, but his efforts proved unsuccessful. On June 30 and July 1, 2015, a hearing on Mr. Lujan's discrimination complaint was held in Denver, Colorado. At the hearing, the company was represented by counsels and Mr. Lujan represented himself. A decision on Mr. Lujan's discrimination complaint is pending. In the meantime, and as noted above, on July 10, 2015, the Commission received Mr. Lujan's request for temporary reinstatement. Mr. Lujan's request was docketed by the Commission as a temporary reinstatement proceeding filed pursuant to section 105(c)(2) of the Act. 30 U.S.C. § 815(c)(2).

Mr. Lujan's request must be denied and the case must be dismissed for lack of jurisdiction. Section 105 (c)(2) provides for the Secretary, not the affected miner, to bring an application for temporary reinstatement. 30 U.S.C. § 815(c)(2). Section 105(c)(2)states, "[I]f the

Secretary finds that such complaint [i.e., the miner’s complaint to MSHA that he or she has suffered discrimination] was not frivolously brought, the Commission . . . **upon application of the Secretary**, shall order the immediate reinstatement of the miner pending final order on the complaint.” 30 U.S.C. §815(c)(2) (*emphasis added*). There is no comparable provision in section 105(c) or elsewhere in the Act authorizing a miner to bring such an application on his or her own behalf.¹ Therefore, because the case is not sanctioned by the Act, I lack the statutory authority to hear it, and Mr. Lujan’s application must be and is **DENIED**. The case is **DISMISSED**.


David F. Barbour
Administrative Law Judge

Distribution: (1st Class Mail)

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Mark L. Lujan, P.O. Box 4733, Grand Junction, Colorado 81502

¹ As the Sixth Circuit noted in *N. Fork Coal Co. v. Fed. Mine Safety & Health Review Comm’n*, 669 Fd.735, 744 (6th Cir. 2015), “[T]emporary reinstatement is not appropriate when a miner pursues an individual ‘action’ under §815(d)(3).” (Citations omitted.)