

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
7 PARKWAY CENTER, SUITE 290  
875 GREENTREE ROAD  
PITTSBURGH, PA 15220  
TELEPHONE: 412-920-7240 / FAX: 412-928-8689

**JUL 27 2016**

PENNYRILE ENERGY, LLC,  
Contestant,

v.

SECRETARY OF LABOR  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
Respondent.

CONTEST PROCEEDING

Docket No. KENT 2016-432-R  
Order No. 9048420; 06/15/2016

Mine: Riveredge Mine  
Mine ID: 15-19424

**ORDER DENYING MOTION FOR EXPEDITED HEARING**

Before: Judge Steele

This case is before me upon a notice of contest under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d). Order No. 9048420 was issued to Contestant on June 15, 2016, for an alleged violation of 30 C.F.R. § 48.25. On July 15, 2016, Contestant filed a Notice of Contest and a Motion for Expedited Hearing. The Secretary filed the Secretary's Answer to Notice of Contest on July 21, 2016. Contestant filed Pennyrile Energy's Reply to the Secretary's Opposition to Motion for Expedited Hearing on July 25, 2016.

The Commission's procedural rule concerning expedited hearings does not address when a motion for an expedited hearing should be granted or denied. 29 C.F.R. § 2700.52. Therefore, Administrative Law Judges retain "informed discretion" in determining whether an expedited hearing is proper, and they must schedule a hearing within a reasonable time. *Secretary of Labor (MSHA) v. Wyoming Fuel Co.*, 14 FMSHRC 1282 (Aug. 28 1992). An expedited hearing is appropriate when there are "extraordinary or unique circumstances resulting in continuing harm or hardship." *Southwest Portland Cement Co.*, 16 FMSHRC 2187 (Oct. 4, 1994) (ALJ); *Mountain Cement Co.*, 23 FMSHRC 694 (June 25, 2001)(ALJ); *Consolidation Coal Company*, 16 FMSHRC 495 (February 1994) (ALJ).

Contestant argues that an expedited hearing is necessary because the order at issue is wrong as a matter of law and "capable of repetition." Mot. For Expedited Hr'g at 1-2. Specifically, Order No. 9048420 was issued because an underground miner, who was working on the surface area of a mine, did not have the training required by Section 115 of the Mine Act and 30 C.F.R. § 48.25. Notice of Contest Ex. A. Contestant argues that without a hearing to determine if underground miners are required to obtain this training, miners will continue to get cited, and thus, an expedited hearing is necessary. Mot. For Expedited Hr'g at 1-2.

Contestant fails to demonstrate extraordinary or unique circumstances that result in a continuing harm or hardship. Miner training is not a hardship that necessitates an expedited hearing. Additionally, the operator's disagreement as to MSHA's regulatory interpretation of 30 C.F.R. § 48.25 does not warrant an expedited hearing.

Accordingly, Contestant's Motion for Expedited Hearing is **DENIED**.

*William S. Steele*

William S. Steele  
Administrative Law Judge

Distribution:

Mark E. Heath, Esq., Spilman Thomas & Battle, PLLC, 300 Kanawha Boulevard, East, P.O. Box 273, Charleston, WV 25321-0273

Mary Sue Taylor, Esq., Office of the Solicitor, U.S. Department of Labor, 618 Church Street, Suite 230, Nashville, TN 37219

/ktw