

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
U.S. CUSTOM HOUSE
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DENVER, CO 80202-2500
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April 9, 2009

SPARTAN MINING CO., INC.,	:	CONTEST PROCEEDINGS
Contestant,	:	
	:	Docket No. WEVA 2007-517-R
	:	Citation No. 7261540; 05/16/2007
	:	
	:	Docket No. WEVA 2007-518-R
v.	:	Citation No. 7261541; 05/16/2007
	:	
	:	Docket No. WEVA 2007-519-R
	:	Citation No. 7261542; 05/16/2007
	:	
	:	Docket No. WEVA 2007-520-R
SECRETARY OF LABOR,	:	Citation No. 7261543; 05/16/2007
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Ruby Energy Mine
Respondent,	:	Mine ID 46-08808
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 2008-1756
Petitioner,	:	A.C. No. 46-08808-158980
	:	
v.	:	
	:	
SPARTAN MINING CO., INC.,	:	
Respondent.	:	Ruby Energy Mine

ORDER DENYING MOTION FOR CONTINUANCE OF HEARING

On January 14, 2010 a hearing on the above captioned matters was set to commence on Tuesday, April 13, 2010. On Wednesday, April 7, 2010, less than one week prior to the hearing date, and more than two and one-half months after the matter had been set for hearing, counsel for Spartan Mining Company (“Spartan”) filed a Motion for Continuance of Hearing (the “Motion”). The Secretary opposes the Motion.

Following the filing of the Motion, counsel for Spartan requested a telephone conference call to discuss the matter. Counsel was advised that the Motion would be denied and that a conference call was not necessary. Counsel subsequently requested a written denial of the Motion in order to seek review by the Commission. Counsel was advised that any additional information, beyond that which was included in the Motion, could be submitted via email and would be considered in making a determination about rescheduling the hearing and in this written ruling on the Motion. Counsel's response failed to include any additional information beyond that which was included in the Motion. Instead, Counsel for Spartan said that she wished to have the opportunity to "orally expound" on the Motion.

Spartan contends that hearing preparation had been suspended as a result of a "pending settlement offer [by the Secretary] and intended acceptance [by Spartan]." Mot. at 2. Further, Spartan contends that, in light of the April 5, 2010 tragedy at Upper Big Branch Mine¹, its corporate counsel has been unable to provide settlement approval. *Id.* Finally, Spartan states that its witnesses "have asked that this case be rescheduled due to their inability to focus on the issues in this case due to their grief and help needed with the Upper Big Branch [M]ine." *Id.*

Both Spartan and the Secretary have had ample time to settle this matter. By next week, nearly three months will have elapsed since these dockets were set for hearing. Further, these citations are very old, having been issued in May of 2007. While I am conscious of and deeply saddened by the events at the Upper Big Branch Mine, I am also aware that close to a week remains before the commencement of the hearing. If the parties are as close to settlement as Spartan's Motion alleges, then little effort is required on the part of its corporate counsel, and more than enough time remains for the case to settle before hearing. The same applies for the Secretary to obtain the District Manager's approval of the settlement.

I am sympathetic to Spartan's concerns regarding its witnesses' "lack of focus" and "grief" stemming from the Upper Big Branch Mine tragedy. However, Spartan's lack of specificity in describing its witnesses' actual involvement in, or connection to, the Upper Big Branch Mine tragedy leaves me without the information necessary for a potential finding of good cause shown to continue the hearing. Spartan has listed three witnesses for the hearing, but has not described the witnesses' locations or their positions at the mine.

As a result of the current case backlog, Commission judges are inundated with cases, many of which are set for hearing. At present, my own hearing docket extends into October of this year. Where good cause for a continuance is not shown, I cannot be held hostage by the parties' decision to suspend hearing preparation in the days leading up to a hearing that has been set for almost three months. For this reason, and the reasons cited above, I **DENY** Spartan's

¹ Massey Energy Company is the current controller of both Performance Coal, which operates the Upper Big Branch Mine, and Spartan Mining Co., Inc., which operates the mine at issue in this matter.

Motion for Continuance of Hearing. I will, however, allow any Spartan witness who finds it a hardship to attend the hearing based upon incidents at the Upper Branch Mine to appear by telephone to present testimony.

Margaret A. Miller
Administrative Law Judge

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