

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

September 11, 2002

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. CENT 2002-127-M
Petitioner	:	A.C. No. 13-02194-05501
	:	
v.	:	Docket No. CENT 2002-193-M
	:	A.C. No. 13-02194-05502
KNAAK SAND,	:	
Respondent	:	Knaak Sand

ORDER DENYING REQUEST FOR RECUSAL

On June 6, 2002, I conducted a telephone conference with James V. Knaak, sole proprietor of Knaak Sand, and Thomas J. Pavlat, a Conference & Litigation Representative of the Mine Safety and Health Administration. During the telephone conference Mr. Knaak raised jurisdictional questions. Consistent with this Commission’s decision and the longstanding Federal appellate case law cited in *Jerry Ike Harless Towing, Inc.*, 16 FMSHRC 683 (April 1994), I informed Mr. Knaak that sand and gravel facilities generally are subject to Mine Act jurisdiction.

In correspondence dated August 23, 2002, Mr. Knaak, citing the June 6 telephone conference that addressed the issue of jurisdiction, stated “[i]n fairness to me, I believe I should have a different judge, that will at least listen to me before he finds in favor of the government.” I construe the August 23 letter as a request for recusal.

In response to Mr. Knaak’s August 23 letter, on September 11, 2002, I initiated a telephone conference with Mr. Knaak and the Secretary’s counsel Edward Falkowski. I again explained the case law concerning Mr. Knaak’s jurisdictional objections. I requested Mr. Falkowski to provide a copy of the Commission’s *Harless* decision for Mr. Knaak’s information. I assured Mr. Knaak that I had not prejudged his case. However, I also emphasized that, in deciding this matter, I was bound by statutory law and case precedent.

Commission Rule 55(f), 29 C.F.R. § 2700.55(f), authorizes the presiding judge to hold conferences in an effort to simplify issues. Mr. Knaak’s apparent disappointment with regard to the case law as it relates to his jurisdictional objections does not provide a basis for my recusal. Accordingly, the request for recusal **IS DENIED**. Consequently, the hearing will convene as scheduled at **9:00 a.m. on Wednesday, October 16, 2002**. The hearing location will be specified in a subsequent Order.

Jerold Feldman
Administrative Law Judge

Distribution: (Certified Mail)

Edward Falkowski, Esq., Office of the Solicitor, U.S. Department of Labor,
1999 Broadway, Suite 1600, Denver, CO 80201

James V. Knaak, Knaak Sand, Box 1, Eldon, IA 52554

/hs