

The matter was proceeding toward hearing when, on December 20, 1999, Respondent's counsel filed a letter which stated: "I am writing to inform the Court that Ms. Connie Prater will be unable to proceed in this matter due to unexpected health reasons. Therefore, please withdraw my appearance for Ms. Prater. Further, please be advised that Ms. Prater will not make any further appearances before the Court." As the Prosecutor noted in his response to this letter, it was not clear whether the Respondent was seeking a continuance in the case until her health permitted her to participate in the proceedings, whether she was no longer contesting the charges or whether she expected the matter to be dropped because she was not going to make any further appearances in the case.

The response of the Prosecutor, prompted a second letter from counsel for the Respondent, which was filed on January 24, 2000. It stated, among other things:

Quite frankly, given that Ms. Prater is currently fighting for her life against what I understand is a recurring cancer, I do not intend to even forward the [prosecutor's] letter to her unless so ordered by the Court. . . . I do not intend to disturb Ms. Prater during her illness to obtain "sworn affidavits" from her or her medical doctors.

As to [the prosecutor's] suggestion that Ms. Prater "consent to an order determining her culpability for ethical misconduct," I can represent to the Court without discussing it with Ms. Prater that she would never do so. Ms. Prater was completely prepared to litigate this matter up until the time that she was diagnosed with her current illness. I respectfully submit that I believe Ms. Prater would not consent to some order proposed by [the prosecutor] simply to make this matter go away.

. . . At the same time, please do not misunderstand Ms. Prater's position — she was quite clear with me that she has not chosen to withdraw from the case to win the Court's sympathy. Rather, her decision is borne out of the reality that her attention must be devoted to holding her life together. This proceeding, and the extreme infrequency with which she even participated in Commission proceedings in the past, is simply too remote to the core activities in her life to permit her to focus on this matter as she originally intended.

. . . .

Despite the peremptory tone of the letter, it still did not state exactly what the Respondent's position was with regard to the case. While the letter clearly stated that Ms. Prater would not request a continuance based on affidavits from her doctors and she would not consent to an order disposing of the case, it did not state how the case was supposed to be resolved. The

implication, however, is that if she “withdrew” the case would be dropped. Manifestly, that is not an option available to one facing disciplinary proceedings.

Accordingly, on February 29, 2000, an Order to Show Cause was issued to the Respondent ordering her to show cause why she should not be held in default in this matter.² The order pointed out that:

[I]f Ms. Prater desires that this proceeding be continued until such time as her illness permits her to participate, she must accompany her request with an affidavit from her treating physician setting forth the nature of her illness, how long she has been ill, the reason the illness renders her incapable of participating in the proceedings, and the probable length of time she will be unavailable before the proceeding can resume. Such an affidavit may not be conclusory, but must set forth the medical history and prognosis of Ms. Prater’s condition, substantiate the medical basis for concluding that her health conditions preclude her from participating in the proceedings at this time and identify any medical restrictions that should be placed on her participation in pretrial examination or at trial.

The order also informed her that if she

is not seeking a continuance, but does not intend to participate in the proceedings at all, she should be aware that failure to participate will result in her being found in default and the issuance of a disciplinary order, “which may include reprimand, suspension, or disbarment from practice before the Commission.” 30 C.F.R. § 2700.80(c)(3).

The Respondent was given 21 days to respond to the order, which provided that:

The Respondent shall comply with this order by filing a statement that she is ready to proceed, by requesting a continuance in the manner set out above, or by filing a statement acknowledging that she is aware of the possible penalties facing her and stating that she does not desire to participate in the proceedings. **Failure to comply with this order will result in the issuance of a disciplinary order adjudging a reprimand, suspension or disbarment from practice before the Commission.**

² The order also granted her counsel’s renewed request to withdraw from the case.

On March 21, 2000, a response to the order was received from the Respondent. On May 1, 2000, the prosecutor filed his Proposed Findings, Conclusions and Recommendations. On May 15, 2000, a reply to the prosecutor's filing was received from Ms. Prater.

Findings of Fact and Conclusions of Law

The Respondent's response to the Order to Show Cause consisted of a copy of a statement signed by "John Furcolow, M.D." and addressed "TO WHOM IT MAY CONCERN." It stated, "[t]his is to document that I follow Ms. Prater for a host of medical problems . . ." It was not accompanied by any other document. The statement, which consisted of two paragraphs of two sentences each, was not made under oath and is conclusory in nature. Although it lists some conditions for which Ms. Prater is being treated, it does not set forth the nature of those conditions, how long the Respondent has been ill, the reasons that she is incapable of participating in a hearing or the probable length of time she will be unavailable. Further, the statement does not set forth a medical history and prognosis of Ms. Prater's condition or substantiate the medical basis for concluding that her medical condition prevents her from participating in a hearing. Indeed, nowhere in the statement does it claim that the Respondent is not able to participate in these proceedings.

Since the statement requests that its contents "be held under strictest confidence," her "medical problems" will not be discussed in detail. However, it does not appear that any of them, either individually or in combination, would preclude her from taking part in a disciplinary hearing. Significantly, there is not mention in the statement of a "recurrent cancer" or any other life threatening disease of that nature. It is unclear for what purpose the statement was submitted, since it was not accompanied by a request for a continuance or with any explanation.

Accordingly, I conclude that the Respondent is in default in this matter because she failed to comply with the Order to Show Cause. She did not state that she was ready to proceed, she did not request a continuance³ and she did not state that she did not want to participate in the proceedings. In fact, in her reply to the prosecutor's Proposed Findings, Conclusions and Recommendations she concludes by stating: "I am respectfully asking to withdraw from this case. My priorities have changed and I prefer my energy to be spent on what I consider to be a more important issue - my health. I do not foresee proceeding with this case now, or anytime in the near future." As previously noted, withdrawal is not an option available to her. Inasmuch as Ms. Prater has defaulted in this proceeding, I will proceed to adjudging an appropriate sanction.

Disciplinary Sanction

³ If the doctor's statement was intended to be a request for continuance, it did not comply with the instructions provided for making such a request, nor does it, on its face, indicate that a continuance is necessary or justified.

On July 24, 1994, a 13 count indictment was returned against, among others, Pra-Mac Enterprises and Connie McKinney (a.k.a. Connie Prater) in the United States District Court for the Eastern District of Kentucky. The first count of the indictment alleged a conspiracy

to thwart and defeat MSHA's program for testing and controlling levels of concentration of respirable coal dust present in the active workings of coal mines by submitting fraudulent respirable coal dust samples to MSHA in violation of Title 18, United States Code, Sections 1001 and 1341.⁴

The alleged conspirators were Pra-Mac Enterprises, a Kentucky corporation of which Connie Prater is the sole owner, director and officer, Connie Prater, and three of her relatives who worked part time for Pra-Mac.

The next 11 counts alleged violations of 18 U.S.C. §§ 2 and 1001 in that Pra-Mac Enterprises, Connie Prater and various others submitted false dust samples and dust data cards for at least eight mines to MSHA.⁵ The final count alleged a violation of 18 U.S.C. § 1341 by mailing the false dust samples and dust data cards to MSHA.

The presentation of the government's case lasted several days. At the close of the government's case the parties entered into a plea agreement. Pra-Mac pleaded guilty to Count 2 of the indictment, which alleged that the corporation

submitted and caused to be submitted to MSHA respirable coal dust samples which were represented as having been taken in

⁴ When the case occurred, 18 U.S.C. § 1001 stated:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years, or both.

The section was completely revised in 1996, Pub. L. 104-292, § 2, 110 Stat. 3459 (Oct. 11, 1996), but prohibits the same things. 18 U.S.C. § 1341 prohibits use of the U.S. Postal Service to carry out frauds and swindles.

⁵ 18 U.S.C. § 2 makes "aiders and abettors" liable as principals in the commission of a crime.

accordance with the requirements of the Mine Safety Act at the coal mines of the defendants' customers, including but not limited to those coal mines mentioned in this Indictment, but which in truth and in fact, as defendants then and there well knew, were not taken at such coal mines and were not taken in accordance with the requirements of the Mine Safety Act; the defendants thereby concealing and covering up from MSHA material facts, the material facts being the level of the concentration of respirable coal dust actually present in the active workings of the mines on those dates for which the fraudulent respirable dust samples were submitted to MSHA

Connie Prater pleaded guilty to an Information which alleged:

that CONNIE PRATER failed to take the required valid respirable coal dust samples for the following mines: the Todco, Incorporated No. 1 Mine; the Dukane Energy, Incorporated No. 1 Mine; the White Cloud Mining Company, Incorporated No. 1 Mine; the V & M Mining Company of Paintsville, Incorporated No. 6 Mine; and the Lynx Coal Company, Incorporated No. 3 Mine. The respirable coal dust samples submitted to the Mine Safety and Health Administration were fabricated outside the mines or were otherwise not taken in accordance with the requirements of the Mine Safety Act. In violation of Title 30, United States Code, Section 820(d), and Title 30, Code of Federal Regulations, Sections 70.201, 70.207 and 70.208.

All of these crimes, the ones alleged and the ones to which Ms. Prater pleaded guilty, involve "moral turpitude," that is, "[c]onduct that is contrary to justice, honesty, or morality." *Black's Law Dictionary* 1026 (7th ed. 1999). While the transcript of the government's case against the Respondent indicates that the government had a strong case, it is only necessary to consider her guilty pleas to arrive at an appropriate sanction in this case. As *Black's* points out, and the prosecutor has well demonstrated in his extensive brief, "[i]n the area of legal ethics, offenses involving moral turpitude — such as fraud or breach of trust — traditionally make a person unfit to practice law." *Id.* Although Ms. Prater is not a lawyer, the principle is the same, and on this basis alone disbarment from practice before the Commission would be an appropriate sanction.

However, not only do the offenses that Ms. Prater admitted committing involve moral turpitude, they also were an attempt to undermine one of the main purposes of the Mine Act. In section 201(b) of the Act, 30 U.S.C. § 841(b), Congress stated, in setting out interim mandatory health standards, that:

Among other things, it is the purpose of this title to provide, to the greatest extent possible, that the working conditions in each underground coal mine are sufficiently free from respirable dust concentrations in the mine atmosphere to permit each miner the opportunity to work underground during the period of his entire adult working life without incurring any disability from pneumoconiosis or any other occupation-related disease during or at the end of such period.

Sections 70.201, 70.207 and 70.208, the sections Ms. Prater pleaded guilty to violating, are the Secretary's rules for conducting dust sampling to fulfil Congress' intention in the Act. By her actions, and the actions of her employees, the Respondent was not only dishonest, but she also placed miners lives in jeopardy. *See Consolidation Coal Co.*, 8 FMSHRC 890, 898-99 (June 1986) (overexposure to respirable dust raises a presumption that pneumoconiosis or chronic bronchitis will result). Consequently, while crimes of moral turpitude would prohibit Ms. Prater from practicing law any place, if she were a lawyer, submitting fraudulent dust samples makes such a sanction that much more appropriate before the commission whose sole purpose is adjudicating matters arising under the Mine Act.

Accordingly, I conclude that Connie Prater has engaged in conduct that warrants discipline and that the appropriate sanction is disbarment from practice before the Commission.

Order

It is **ORDERED** that Connie Prater is **DISBARRED** from appearing before the Commission.

T. Todd Hodgdon
Administrative Law Judge

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