

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

December 8, 1999

BLACK DIAMOND CONSTRUCTION	:	EQUAL ACCESS TO JUSTICE
INC.,	:	PROCEEDING
Applicant	:	
v.	:	Docket No. EAJ 98-1
	:	
SECRETARY OF LABOR,	:	Formerly WEVA 98-1
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	
Respondent	:	

DECISION ON REMAND

Before: Judge Barbour

On November 3, 1999, the Commission affirmed the administrative law judge's decision in *Black Diamond Construction, Inc.*, 20 FMSHRC 1169 (October 1998) (ALJ) and remanded the case to provide the Applicant the opportunity to amend its Equal Access to Justice Act (EAJA) application to include the reasonable fees and expenses it incurred in defending successfully its EAJA award before the Commission (21 FMSHRC _____, Docket No. EAJ 98-01 (November 3, 1999, slip op. at 12)). (In the underlying decision the judge awarded the Applicant fees and expenses of \$14,390.25.)

Pursuant to the remand, the judge ordered the parties to confer and to attempt to reach an agreement upon the amount of the fees and expenses to which the Applicant was entitled. If the parties were unable to agree, the judge requested that the Applicant amend its application specifying its claims and that it support the amended application with full documentation as required by Commission Rule 205 (29 C.F.R. § 2704.205).

Counsels have conferred as ordered, and counsel for the Applicant reports the parties have agreed that a total amount of \$29,624.29 in fees and expenses will be paid by the Respondent to the Applicant. Thus, in addition to the original award of \$14,390.25, the parties have agreed the Applicant is entitled to \$15,234.04 in fees and expenses incurred defending its EAJA award.

ACCORDINGLY, the Secretary is **ORDERED** to pay Black Diamond a total award of \$29,624.29 within 30 days of the date of this decision. Upon receipt of full payment, this proceeding is **DISMISSED**.

David Barbour
Administrative Law Judge

Distribution:

Julia K. Shreve, Esq., Jackson & Kelly, P. O. Box 553, Charleston, WV 25322 (Certified Mail)

Jack Powasnik, Esq., Office of the Solicitor, U. S. Department of Labor, 4015 Wilson Boulevard,
Room 400, Arlington, VA 22203 (Certified Mail)

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