

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
601 New Jersey Avenue, N.W., Suite 9500
Washington, DC 20001

June 7, 2005

DAVID R. COLEMAN, employed by	:	EQUAL ACCESS TO JUSTICE
LODESTAR ENERGY, INC.,	:	PROCEEDING
Applicant	:	
	:	Docket No. EAJ 2004-02
v.	:	Formerly KENT 2003-275
	:	
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Mine ID 15-18015
Respondent	:	Bent Mountain

DECISION APPROVING SETTLEMENT

Before: Judge Feldman

Before me is an application for the recovery of attorney's fees and incidental litigation expenses filed under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (1996), on July 2, 2004, by David R. Coleman who was employed by Lodestar Energy, Inc. (Lodestar). The EAJA application followed a decision in which Coleman prevailed in the underlying 110(c) case brought by the Secretary pursuant to 30 U.S.C. § 820(c). 26 FMSHRC 485 (June 2004). Coleman's net worth does not exceed the limit for individual eligibility under EAJA. 29 C.F.R. § 2704.104(b)(4)(i). The Secretary opposed Coleman's EAJA application on substantive grounds.

Under EAJA, Coleman, as the prevailing party, is entitled to reasonable attorney's fees and expenses in connection with any proceeding, or any significant and discrete substantive portion thereof, in which the Secretary's case was not substantially justified. *Cooper v. United States R.R. Retirement Board*, 24 F.3d 1414, 1416 (D.C. Cir. 1994); 29 C.F.R. § 2704.105(a). The Secretary has the burden of demonstrating that her position was substantially justified. *Lundin v. Mecham*, 980 F.2d 1450, 1459 (D.C. Cir. 1992). Substantially justified means that the Secretary was "justified to a degree that could satisfy a reasonable person" and that the Secretary had "a reasonable basis both in fact and in law" to continue to proceed with her litigation. *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). Determining whether the Secretary's actions were substantially justified "necessarily requires the court to examine . . . the Government's litigation position and the conduct that led to litigation. After doing so, the court must then reach a judgment independent from that of the merits phase." *FEC v. Rose*, 806F.2d 1081, 1090 (D.C. Cir. 1986).

In an *Interim Decision* issued on January 14, 2005, Coleman's EAJA was partially granted. 27 FMSHRC 104. Specifically, the *Interim Decision* determined, while the Secretary initially was substantially justified in bringing the case against Coleman, the Secretary lost her substantial justification the day before trial after a deposition revealed the testimony of her primary witness was unreliable. *Id.* at 112. Consequently, Coleman's EAJA application for attorney fees and expenses incurred on or after the commencement of the February 11, 2004, trial was granted. *Id.* at 113. The Interim Decision established a March 29, 2005, filing schedule for Proposals for Reimbursement if the parties could not reach a Joint Stipulation for Reimbursement.

After several extensions for the filing of reimbursement proposals were granted to enable the parties to engage in settlement discussions, the parties now have reached an agreement. In settlement of Coleman's EAJA application, the Secretary has agreed to pay Coleman the sum of \$18,000.00 in satisfaction of all attorney's fees and other incidental expenses sought under EAJA.

I have considered the representations and documentation submitted in this matter and I conclude that the proffered settlement is appropriate and in the public interest. **WHEREFORE**, the motion for approval of settlement **IS GRANTED**, and **IT IS ORDERED** that the Secretary, within 45 days of this Order, pay David R. Coleman \$18,000.00 in satisfaction of his claim under the EAJA. Upon receipt of timely payment, David R. Coleman's EAJA application **SHALL BE DISMISSED**.

Jerold Feldman
Administrative Law Judge

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