

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

June 21, 1996

SECRETARY OF LABOR, : DISCRIMINATION PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. KENT 96-96-D
On behalf of ANDY HOWARD, JR., : MSHA Case No. PIKE CD 95-21
Complainant :
v. : Martiki Surface Mine
: Mine I.D. No. 15-07295 BLH
BRUCE YOUNG AND YOGO, INC., :
Respondent :

DECISION APPROVING SETTLEMENT;
ASSESSMENT OF CIVIL PENALTY

The parties have submitted an executed settlement agreement in this matter which includes, but is not limited to, the following items:

1. Complainant, Andy Howard, Jr., agrees not to institute any further legal action arising from his alleged discharge of August 31, 1995;

2. Mr. Howard and the Secretary of Labor agree to waive permanent reinstatement for Mr. Howard;

3. Mr. Howard agrees to dismiss the appeal of his Kentucky unemployment insurance claim;

4. Respondents agree to pay Mr. Howard \$4,350 for alleged mental and emotional distress in accordance with a schedule set forth in the agreement;

5. Respondents agree to expunge from Mr. Howard's personnel file any references to his separation of August 31, 1995, and any references to the discrimination complaint he filed with MSHA, or the resulting proceedings before the Federal Mine Safety and Health Review Commission;

6. Respondents agree not to inform any prospective employers of Mr. Howard of the discrimination complaint filed with MSHA, or the resulting proceedings before the Federal Mine Safety and Health Review Commission;

7. Respondents agree to provide Mr. Howard's prospective employers with only the following information: dates of employment with Yogo, Inc., job title and rate of pay;

8. The parties agree that \$1,000 is an appropriate civil penalty in this case.

I have considered the representations set forth in settlement agreement and have determined that they are consistent with section 105(c) of the Act.

ASSESSMENT OF CIVIL PENALTY

Applying the penalty criteria set forth in section 110(i) of the Act, I conclude that a civil penalty of \$1,000 is appropriate.

ORDER

The parties' motion for approval of the settlement agreement is **GRANTED**. Respondents Bruce Young and/or Yogo, Inc. are ordered to pay to the Secretary of Labor a civil penalty of \$1,000 within 30 days of this decision. They are also ordered to pay the agreed upon compensation to Mr. Howard in accordance with the terms of the settlement agreement, and to complete making these payments no later than August 1, 1996. Upon completion of these payments, and payment of the civil penalty, this case is **DISMISSED**.

Arthur J. Amchan
Administrative Law Judge

Distribution:

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