

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

September 10, 1997

SECRETARY OF LABOR, MSHA,	:	TEMPORARY REINSTATEMENT
on behalf of MICHAEL D. BROWN	:	PROCEEDING
Complainant,	:	
	:	Docket No. KENT 97-316-D
v.	:	BARB CD 97-11
	:	BARB CD 97-12
BOOGAR MAN MINING, INC.,	:	
DEMA COAL COMPANY, INC.,	:	Mine ID 15-02755
A & J FUELS, INC., BARRY MOORE,	:	Mine No. 1
and FREDDIE HUNTER,	:	
Respondents	:	

ORDER OF TEMPORARY REINSTATEMENT

This case is before me on an Application for Temporary Reinstatement filed by the Secretary of Labor, acting through her Mine Safety and Health Administration (MSHA), on behalf of Michael D. Brown, pursuant to section 105(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 815(c). The application seeks reinstatement of Mr. Brown as an employee at the No. 1 mine operated by Boogar Man Mining, Inc., or its successor, A & J Fuels, Inc., in Knott County, Kentucky,¹ pending a decision on the Complaint of Discrimination the Secretary has filed against the Respondents on behalf of Brown. For the reasons set forth below, I grant the application and order Mr. Brown's temporary reinstatement.

Section 105(c)(2) of the Act, 30 U.S.C. ' 815(c)(2), provides, in pertinent part, that the Secretary shall investigate a discrimination complaint and if the Secretary finds that such complaint was not frivolously brought, the Commission, on an expedited basis upon application of the Secretary, shall order the immediate reinstatement of the miner pending final order on the complaint.@ The Commission has provided for this procedure with Rule 45, 29 C.F.R. ' 2700.45.

¹ Barry Moore and Freddie Hunter are principal shareholders in Boogar Man Mining, Inc. and Dema Coal Company, Inc. is alleged to exercise control over the No. 1 mine in the production of coal. Accordingly, Moore, Hunter and Dema are operators within the meaning of section 3(d) of the Act, 30 U.S.C. ' 802(d), and are Respondents to this proceeding along with Boogar Man and A & J Fuels.

Rule 45(c), 29 C.F.R. ' 2700.45(c), provides:

Within 10 days following receipt of the Secretary's application for temporary reinstatement, the person against whom the relief is sought shall advise the Commission's Chief Administrative Law Judge or his designee, and simultaneously notify the Secretary, whether a hearing on the application is requested. If no hearing is requested, the Judge assigned to the matter shall review immediately the Secretary's application and, if based on the contents thereof the Judge determines that the miner's complaint is not frivolously brought, he shall issue immediately a written order of temporary reinstatement.

The Application for Temporary Reinstatement was served on Freddie Hunter as Agent for Service of Boogar Man Mining; C. Graham Martin, Esq., as Agent for Service for A & J Fuels; Carl Ray Johnson as Agent for Service for Dema Coal Company; and Barry Moore and Freddie Hunter, individually, on August 19, 1997, by certified mail, return receipt requested. Return receipt cards indicate that Carl Ray Johnson received the application on August 21 and Freddie Hunter received the application both personally and as agent for service on August 22. Barry Moore refused to accept the application by mail. On August 27, Maurice Mullins, an MSHA Special Investigator, attempted to personally serve Moore, but he again refused to accept service. Finally, on September 8, the envelope addressed to C. Graham Martin, Esq., was returned to the Office of the Solicitor, U.S. Department of Labor, Nashville, Tennessee, marked **Unclaimed.**

More than 10 days have elapsed from the date that those Respondents who received the application received it. No request for a hearing on the application has been made by any respondent.

Brown alleges in his application that he was discharged by Boogar Mining on April 1, 1997, because he made safety complaints to Moore and Hunter with regard to working under unsupported roof and refusing to do so in the future. He also alleges that when he returned to the mine on May 2, 1997, to pick up his final pay check **h**e was threatened with bodily harm, threatened with a knife, intimidated and harassed by both Barry Moore and Freddy [*sic*] Hunter and never received his final paycheck. **@** An affidavit from Ronnie L. Brock, Supervisor of Special Investigations for MSHA, states that his investigation verified Moore's complaints.

Accordingly, I conclude that Moore's application has not been frivolously brought and that he is entitled to be temporarily reinstated.

ORDER

Michael D. Brown's Application for Temporary Reinstatement is **GRANTED**. The Respondents, jointly or severally, are **ORDERED TO REINSTATE** Mr. Brown to his former

position, which he held on April 1, 1997, as a drill operator at the No. 1 mine, or to a similar position, at the same rate of pay and benefits **IMMEDIATELY ON RECEIPT OF THIS DECISION.**

T. Todd Hodgdon
Administrative Law Judge
(703) 756-6213

Distribution:

MaryBeth Bernui, Esq., Office of the Solicitor, U.S. Dept of Labor, 2002 Richard Jones Blvd., Suite B-201, Nashville, TN 37215 (Certified Mail)

Mr. Freddie Hunter, Agent for Service, Boogar Man Mining, Inc., Route 194, Cow Creek, Box 300, Allen, KY 41601 (Certified Mail)

C. Graham Martin, Esq., Agent for Service, A & J Fuels, Inc., P.O. Box 123, Maple St., Salyersville, KY 41465 (Certified Mail)

Mr. Carl Ray Johnson, Agent for Service, Dema Coal Co., Inc., Highway 7, HC 80, Box 1070, Dema, KY 41859 (Certified Mail)

Mr. Barry Moore, Box 1323, Martin, KY 41649 (Certified Mail)

Mr. Freddie Hunter, Boogar Man Mining, Inc., Route 194, Cow Creek, Box 300, Allen, KY 41601 (Certified Mail)

Mr. Michael Brown, P.O. Box 483, McDowell, KY 41647 (Certified Mail)

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