

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES

601 New Jersey Avenue, N.W., Suite 9500

Washington, D.C. 20001

March 24, 2003

SECRETARY OF LABOR,	:	DISCRIMINATION PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. KENT 2000-125-D
on behalf of RAYMOND ROMAN,	:	PIKE CD 99-04
Complainant	:	
v.	:	
	:	
EAGLE COAL COMPANY, INC.,	:	No. 10 Mine
Respondent	:	Mine ID No. 15-17977

ORDER DENYING MOTION TO POSTPONE HEARING

Hearings in this case were initially scheduled on April 21, 2000, to commence on June 6, 2000. On May 23, 2000, at the request of the Respondent, hearings were postponed and rescheduled to commence on August 15, 2000. At hearing on August 15, 2000, Respondent moved for a stay because two of its essential witnesses were then the subject of related criminal and "Section 110(c)" investigations.

On November 15, 2002, the Secretary filed a motion to lift the stay, however, counsel for both parties advised that they would not be available for trial until April 2003. On November 27, 2002, the stay order was therefore continued but the parties were ordered therein to hold open April 1, 2003, as the trial date. A second notice to that effect was issued on March 7, 2003.

On March 21, 2003, the Respondent again filed a motion for continuance of hearing claiming that it had not received a requested letter from the U.S. Attorney that he would not prosecute two of his key witnesses, and that those witnesses would therefore still find it necessary to assert their Fifth Amendment Constitutional privilege (the grounds for the initial stays in this case). However, since it is not the general practice of U.S. Attorneys to issue letters guaranteeing not to prosecute, it is unlikely, under the Respondent's scenario, that trial of this case could ever commence.

Respondent, as well as the Secretary, also claim that they are having difficulty locating witnesses. Since they were informed of the April 1, 2003, trial date nearly four months ago however they have had ample time to locate those witnesses.

Considering the age of this case and the above factors, I cannot grant the requested postponement, and it is therefore denied.

Gary Melick
Administrative Law Judge

Distribution: (By Facsimile and Certified Mail)

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