

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

May 23, 2002

SECRETARY OF LABOR, MSHA, on : TEMPORARY REINSTATEMENT
behalf of KENNETH KUNKEL, : PROCEEDING
Complainant :
v. : Docket No. KENT 2002-225-D
: BARB CD 2002-09
SILVER CLOUD COAL, INC., : Mine ID 15-18317
Respondent :

DECISION

Appearances: Anne T. Knauff, Esq., Office of the Solicitor, U.S. Department of Labor,
Nashville, Tennessee, for Complainant,
Robert Copeland, Esq., Copeland & Bieger, Abingdon, Virginia, for Respondent.

Before: Judge Zielinski

A hearing on the Application for Temporary Reinstatement was scheduled for May 3, 2002 at the United States Courthouse in Big Stone Gap, Virginia. The hearing was convened, as scheduled, at 9:00 a.m. Kenneth Kunkel, on whose behalf the application was filed, had experienced transportation problems and was present by phone. The parties advised that they had reached an agreement to settle all claims that Kunkel may have under Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 801, et seq., related to his discharge on March 14, 2002.

Pursuant to the agreement, as explained by the parties at the hearing, Respondent will pay to Kunkel, wages from March 11, 2002 through May 3, 2002, based upon a 40 hour week (without overtime) at the rate of \$18.00 per hour, less lawful deductions. Respondent will also remove any adverse information from Kunkel's personnel file, and will assure that it reflects that he was laid off on May 3, 2002, due to lack of work. In response to any inquiries regarding Kunkel's employment, Respondent will advise of Kunkel's job classification, rate of pay, dates of employment and reason for termination, as stated. Respondent will not oppose any claim by Kunkel for unemployment benefits. In consideration of Respondent's obligations, the Application for Temporary Reinstatement will be withdrawn and Kunkel will withdraw the complaint of discrimination filed with MSHA on or about March 15, 2002. The Secretary will not seek to impose a civil penalty on Respondent and will terminate the investigation of the discrimination complaint.

I have considered the representations and evidence submitted and conclude that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act.

ORDER

Based upon the foregoing, the motion to approve settlement is **GRANTED**. The parties shall comply with the provisions of the agreement as stated on the record and this matter is hereby **DISMISSED**.

Michael E. Zielinski
Administrative Law Judge
703-756-6232

Distribution:

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