

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
601 NEW JERSEY AVENUE, N.W., SUITE 9500
WASHINGTON, D.C. 20001

June 5, 2008

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), on behalf of LAWRENCE L. PENDLEY, Complainant	:	DISCRIMINATION PROCEEDING
	:	
	:	Docket No. KENT 2006-506-D
	:	MADI CD 2006-02
	:	
v.	:	
	:	
HIGHLAND MINING COMPANY, LLC; Respondent	:	Mine ID 15-02709
	:	Highland No. 9 Mine
	:	
SECRETARY OF LABOR, MSHA, on behalf of LAWRENCE PENDLEY, Complainant	:	TEMPORARY REINSTATEMENT
	:	
	:	Docket No. KENT 2007-265-D
	:	MADI CD 2007-05
	:	
v.	:	
	:	
HIGHLAND MINING COMPANY, LLC, Respondent	:	Mine ID 15-02709
	:	Highland 9 Mine
	:	
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), on behalf of LAWRENCE L. PENDLEY, Complainant	:	DISCRIMINATION PROCEEDING
	:	
	:	Docket No. KENT 2007-383-D
	:	MADI CD 2007-05
	:	
v.	:	
	:	
HIGHLAND MINING COMPANY, LLC; DAVID WEBB, LARRY MILLBURG and SCOTT MAYNARD as AGENTS, Respondents	:	Mine ID 15-02709
	:	Highland No. 9 Mine
	:	

DECISION

Appearances: James Brooks Crawford, Esq., Jonathan R. Hammer, Esq., Office of the Solicitor, U.S. Department of Labor, Arlington, Virginia, on behalf of the Complainant
Marco M. Rajkovich, Jr., Esq., Melanie J. Kilpatrick, Esq., Lexington, Kentucky, on behalf of the Respondents

Before: Judge Barbour

These cases are before me on discrimination complaints brought by the Secretary of Labor, acting through her Mine Safety and Health Administration (MSHA), on behalf of Lawrence Pendley and upon an application for temporary reinstatement filed by the Secretary for Pendley. The complaints asserted Highland and its agents, David Webb, Larry Millburg, and Scott Maynard, illegally suspended Pendley and terminated his employment in violation of section 105(c) of the Federal Mine Safety and Health Act of 1977, as amended. 30 U.S.C. § 815(c). The application, which was filed pursuant to section 105(c)(2) of the Act, 30 U.S.C. § 815(c)(2), sought Pendley's temporary reinstatement to the position he held prior to his suspension and termination.

On May 30, 2007, I granted the application and temporarily reinstated Pendley. 29 FMSHRC 424 (May-June 2007). On May 19, 2008, I issued an interim decision on liability, a decision incorporated herein by reference. 30 FMSHRC ____ (May-June 2008). In the interim decision I ruled Highland Mining Company, LLC (Highland) and its agent, David Webb, unlawfully discriminated against Pendley, when Highland suspended Pendley from work in December 2006, and I granted the Secretary's and Pendley's complaint of discrimination (Docket No. KENT 2006-506). I ordered counsels to confer to determine the appropriate back pay and interest to be awarded Pendley and to agree on any other relief required to make Pendley whole for the time he was illegally suspended.

In compliance with the order, counsels and Pendley have agreed as follows:

1. The total wages lost for the time of suspension from the afternoon of December 21, 2005 and three days amount to \$1186.53. This total amount is based upon an average of 12.5 working hours per day including 27.75 hours of regular pay at \$19.215 per hour and 20 hours of overtime at \$28.823 per hour pay and a 4 hour holiday correction of 4 hours at \$19.215 per hour pay for a total of 51.75 hours and a total pay amount of \$1186.53.
2. Interest in the total amount of \$219.[95] [¹] was calculated as summarized in Exhibit A up to June 6, 2008, using the OPM guidelines for backpay annual interest rates by quarter that are based on IRS official rates pursuant

¹ The parties' Statement of Damages lists the total interest amount as \$219.46. Statement of Damages 1. The parties' attached calculations sheet (Exhibit A) lists the interest amount as \$219.95. Counsel for the Secretary has orally advised me \$219.95 is the correct amount.

to 5 U.S.C. [§] 5596 and 5 CFR [§] 550.801-808.
See also Secretary v. Arkansas-[Carbona] Company,
5 FMSHRC 2042 (December 1983). The interest is
to accrue up to the day of payment.

3. The parties, including Mr. Pendley, have further reviewed these matters and no other damages or cost amounts have been claimed or incurred during or because of the December 21, 2005 suspension.

Statement of Damages 1-2.

ORDER

In view of the parties' agreement, within 30 days of the date of this decision, Highland **IS ORDERED** to pay Pendley a total amount of \$1406.48. If payment is made after June 6, 2008, Highland also **IS ORDERED** to pay any additional interest that has accrued between June 6 and the actual date of payment.

In addition, and as set forth in the interim decision, Highland **IS ORDERED** to pay a civil penalty of \$5,000 for its violation of section 105(c). Upon payment of the damages and interest to Pendley and upon payment of the civil penalty, Docket No. KENT 2006-506-D **IS DISMISSED**.

Further, David Webb, Highland's agent, is reminded he **HAS BEEN ORDERED** to cease and desist from interfering with the section 105(c) rights of Pendley while he remains in Highland's employ and to cease and desist from interfering with the same rights of all other miners employed by Highland.

In the interim decision I also found Highland had not discriminated against Pendley when it suspended him from work on March 21, 2007, and when it subsequently terminated his employment. Therefore, I **DENIED AND DISMISSED** Docket No. KENT 2008-383-D.

Finally, I noted Pendley's reinstatement (KENT 2007-265-D) would **REMAIN IN EFFECT** until this decision, of which the interim decision has become a part, **BECOMES FINAL**. When that happens, KENT 2007-265-D also is **DISMISSED**.

David F. Barbour
Administrative Law Judge
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