

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
2 SKYLINE, Suite 1000  
5203 LEESBURG PIKE  
FALLS CHURCH, VIRGINIA 22041

May 6, 1999

|                                    |   |                           |
|------------------------------------|---|---------------------------|
| SECRETARY OF LABOR,                | : | DISCRIMINATION PROCEEDING |
| MINE SAFETY AND HEALTH             | : |                           |
| ADMINISTRATION (MSHA),             | : | Docket No. SE 98-184-D    |
| on behalf of BENNARD SMITH,        | : | BIRM CD 98-02             |
| Complainant                        | : |                           |
| v.                                 | : |                           |
|                                    | : | No. 3 Mine                |
| JIM WALTER RESOURCES INCORPORATED, | : | Mine ID No. 01-00758      |
| Respondent                         | : |                           |

**DECISION**

Appearances: William Lawson, Esq., Office of the Solicitor, U. S. Department of Labor, Birmingham, Alabama, on behalf of Complainant; David M. Smith, Esq., and James P. Naftel, Esq., Maynard, Cooper & Gale, P.C., Birmingham, Alabama, and Guy W. Hensley, Esq., Jim Walter Resources, Inc., on behalf of Respondent.

Before: Judge Melick

This case is before me upon a complaint of discrimination and petition for assessment of civil penalty under Sections 105(c) and 105(d) of the Federal Mine Safety and Health Act of 1977 (the Act). Following hearings a decision on the merits was issued on March 23, 1999, granting the Secretary's Complaint in part. The parties have now filed a motion to approve a settlement agreement providing a reduction in civil penalty to \$1,500.00 and damages to the individual Complainant, Bennard Smith. Mr. Smith has agreed to the proposed amount of damages. I have considered the representations and documentation submitted in this case including the entire trial record and I conclude that the proffered settlement is acceptable under the criteria set forth in Section 110(i) of the Act.

**WHEREFORE**, the motion for approval of settlement is **GRANTED**, and it is **ORDERED** that Respondent pay damages of \$2,789.00 to Bennard Smith and a civil penalty of \$1,500.00 to the Secretary within 40 days of this order.

Gary Melick  
Administrative Law Judge

Distribution:

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