

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

August 25, 1995

SECRETARY OF LABOR,	:	TEMPORARY REINSTATEMENT
MINE AND SAFETY AND HEALTH	:	PROCEEDING
ADMINISTRATION (MSHA),	:	
ON BEHALF OF	:	Docket No. VA 95-69-DM
DELBERT W. BENNETT,	:	MSHA Case No. NE MD 95-05
v.	:	
Applicant	:	Grayson Quarry
	:	
CARDINAL STONE COMPANY,	:	
Respondent	:	
	:	

ORDER OF TEMPORARY REINSTATEMENT

On August 11, 1995, the Secretary filed an application for temporary reinstatement on behalf of Delbert W. Bennett. The application for temporary reinstatement was mailed to Cardinal Stone Company, (Respondent), by certified mail, return receipt requested.

On August 25, 1995, the Secretary filed a motion for temporary reinstatement. Attached to the motion is a copy of a return receipt, indicating receipt by Respondent of the application for temporary reinstatement on August 14, 1995. To date, the Respondent has not advised the Chief Administrative Law Judge on his designee, whether a hearing is requested. The Secretary asserts that Respondent has not notified the Secretary whether a hearing is requested.

29 C.F.R. ' 2700.45(C) provides, as pertinent, as follows:

Within 10 days following receipt of the	Judge or his designee, and	Sec
Administrative Law		
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 was not frivolously brought, he shall		
issue immediately a written order of temporary		rei

More than ten days have elapsed following receipt by Respondent of the Secretary's a application for temporary reinstatement. No request has been received from the Respondent

requesting a hearing on the application. I have reviewed the Secretary's application. Based on the contents thereof, I determine that the complaint of Delbert W. Bennett was not frivolously brought.

According, it is **ORDERED**, that the respondent reinstate Delbert W. Bennett to the position he held immediately prior to being fired or to a similar position at the same rate of pay, and with the same or equivalent duties assigned to him. It is further ORDERED that the reinstatement shall remain in effect pending a final order by the Commission upon Applicant's Complaint of Discrimination.

Avram Weisberger
Administrative Law Judge
(703) 756-5233

Distribution:

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