

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1244 SPEER BOULEVARD #280
DENVER, CO 80204-3582
303-844-3577/FAX 303-844-5268

July 26, 2002

CORD EASLEY,	:	DISCRIMINATION PROCEEDING
Complainant	:	
	:	Docket No. WEST 2001-133-DM
	:	Portable Crusher #1
	:	
v.	:	Mine I.D. 45-03357
	:	
MORRILL ASPHALT PAVING,	:	
Respondent	:	

**ORDER DENYING RESPONDENT'S MOTION TO TAKE TESTIMONY
OF ROGER HARTING BY TELEPHONE**

Counsel for Respondent filed a letter-motion requesting that it be allowed to present the testimony of Roger Harding by telephone at the hearing in this case. Counsel stated that Mr. Harting no longer works for Respondent, lives in another state, and is not available on the date scheduled for hearing. Counsel for Complainant filed an objection.

Roger Harting is a critical witness in this case. Taking the testimony of such a key witness as Mr. Harting by telephone is fraught with difficulties and compromises Complainant's right of cross-examination. The Federal Rules make it clear that testimony should not be taken in such a manner except in extraordinary circumstances. *See* Fed. R. Civ. P. 43(a) including Advisory Committee Notes for 1996 Amendment. Deposition testimony provides a superior means of securing the testimony of a witness who is not available to testify. *Id.* Consequently, Respondent's motion to take Roger Harting's testimony by telephone is **DENIED**.

Richard W. Manning
Administrative Law Judge

Distribution:

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