

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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July 3, 2002

HAZEL OLSON,	:	DISCRIMINATION PROCEEDING
Complainant	:	
	:	Docket No. WEST 2002-304-D
	:	DENV CD 2001-03
	:	
v.	:	Mine I.D. 45-03357
	:	Dry Fork Mine
WYOMING FUELS-WYOMING, INC.,	:	
d/b/a DRY FORK COAL COMPANY	:	

ORDER DESCRIBING PURPOSE OF SECTION 105(C)(3) OF THE MINE ACT
ORDER GRANTING COMPLAINANT AN EXTENSION OF TIME

Hazel Olson called my office several times over the past week stating that she is seeking from the Department of Labor’s Mine Safety and Health Administration (“MSHA”) a copy of the file developed during MSHA’s investigation of her discrimination complaints. Apparently, Ms. Olson has filed a Freedom of Information Act request with Sandra L. Yamamoto of MSHA’s Technical Compliance and Investigation Division. She states that she needs this information to respond to Respondent’s renewed motion to dismiss.

Under section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(c)(2)(“Mine Act”), any miner or applicant for employment may file a complaint with MSHA alleging that he or she was discriminated against in violation of section 105(c)(1). MSHA is required to investigate the complaint of discrimination. If “upon such investigation,” MSHA determines that section 105(c)(1) was violated, MSHA is required to file a complaint of discrimination on behalf of the complainant with the Federal Mine Safety and Health Review Commission (the “Commission”). If, on the other hand, MSHA determines that section 105(c)(1) was not violated, “the complainant shall have the right . . . to file an action on his own behalf before the Commission, charging discrimination or interference in violation of paragraph (1).” 30 U.S.C. § 815(c)(3).

The Commission is an independent agency that is not part of the Department of Labor or MSHA. In her response to Chief Judge Barbour’s order to file an amended complaint, Ms. Olson replied:

I can’t get an interview for a job, much less a job, because MSHA has not done what they are supposed to do and protect me when I filed complaints. They just hung me out to dry.

As an administrative law judge with the Commission, I do not have the authority to order MSHA to reopen its investigation so that it can more thoroughly investigate Ms. Olson's complaints. I also do not have the authority to require MSHA to provide Ms. Olson with a copy of all or portions of its investigative files. Section 105(c)(3) of the Mine Act authorizes Ms. Olson to "file an action on her own behalf." Section 105(c)(3) was enacted to give a complainant an opportunity to try to establish that he or she was discriminated against, despite the fact that MSHA determined that there was no discrimination. Consequently, this case is not an appeal of MSHA's decision not to file a discrimination complaint but is a new, independent proceeding brought by Ms. Olson on her own behalf. The Commission does not review MSHA's investigation to determine whether it was competent or to determine whether MSHA's conclusions were correct. Neither the Secretary of Labor nor MSHA are a party in this case.

In order to prevail in this case, Ms. Olson must establish,, "on her own behalf," that she engaged in protected activity and that Respondent's decision not to hire her was motivated at least in part by that protected activity. Commission Rule 42, 29 C.F.R. § 2700.42, requires that a complaint of discrimination "include a short and plain statement of the facts, setting forth the alleged discharge, discrimination or interference, and a statement of the relief requested." In his order of May 24, the Commission's chief judge required Ms. Olson to amend her complaint to "state clearly what rights she allegedly exercised, when she allegedly exercised them, and what adverse action she allegedly suffered as a result, and when she suffered them," as required by Rule 42. Ms. Olson's response, dated June 12, 2002, contains some general allegations. Respondent filed a renewed motion to dismiss following its receipt of Ms. Olson's response.

Ms. Olson must respond to Respondent's renewed motion to dismiss. In her response, Ms. Olson should list the facts that she is relying on to establish that she was discriminated against. The list of facts must include what Mine Act rights she raised and when and where she raised them, and what adverse actions she suffered at the hands of Respondent and when and where she suffered them. Ms. Olson is the complainant in this case and she should have these facts at her disposal.

Because Ms. Olson is not represented by counsel and it appears that she originally believed that the Commission is empowered to review MSHA's investigation of her complaints, I am granting her an extension of time to respond to Respondent's renewed motion to dismiss. Ms. Olson shall file her response to the renewed motion to dismiss, as described above, on or before **August 5, 2002**.

Richard W. Manning
Administrative Law Judge

Distribution:

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