

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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September 6, 2002

THOMAS P. DYE II,	:	DISCRIMINATION PROCEEDING
Complainant	:	
	:	Docket No. WEST 2002-408-DM
	:	RM MD 02-11
	:	
v.	:	Mine I.D. 05-01732
	:	Cotter Mill
MINERAL RECOVERY SPECIALISTS, INC.,	:	
Respondent	:	

**PREHEARING ORDER**

This proceeding was brought by Thomas P. Dye against Mineral Recovery Specialists, Inc., (“MRSI”) under section 105(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 *et seq.* (“Mine Act”) and 29 C.F.R. § 2700.40 *et seq.* The complaint alleges, in part, that MRSI violated section 105(c) of the Mine Act when it did not hire Dye as a permanent employee because he insisted that a recently repaired piece of equipment be fully safety-tested before it was put back into service. MRSI has retained counsel who states that he will be filing a more complete response to Mr. Dye’s complaint. Section 105(c)(3) of the Mine Act provides that proceedings under section 105(c) shall be “expedited by the ... Commission.”

It is important for Mr. Dye and MRSI to understand the limits of my jurisdiction. I do not have authority to determine whether any actions taken against Mr. Dye by MRSI were unfair and unreasonable unless such actions violated the anti-discrimination provisions of the Mine Act at 30 U.S.C. § 815(c). Under that provision, a mine operator is prohibited from discriminating against a miner or applicant for employment because he complained about safety or health conditions at the mine or refused to perform a task that he reasonably and in good faith believed presented a hazard to his safety or health. A miner’s safety complaints or actions are known as “protected activity.” A mine operator may not take adverse action against a miner for such protected activity.

If the parties are unable to settle the case and if the case is not otherwise dismissed, a formal hearing will be held. The issues at the hearing will include whether MRSI discriminated against Mr. Dye. At a hearing, Mr. Dye will be required to present evidence that he engaged in protected activity and that MRSI’s adverse actions were motivated at least in part by that protected activity. MRSI may attempt to rebut Mr. Dye’s case at the hearing by presenting evidence that either no protected activity occurred or that the actions taken with respect to Mr. Dye were in no part motivated by the protected activity. If MRSI is unable to present such

evidence, it may present evidence that the actions it took with respect to Mr. Dye were also motivated by unprotected activities and that it would have taken these actions for the unprotected activity alone.

The Federal Mine Safety and Health Review Commission is not part of the Department of Labor's Mine Safety and Health Administration (MSHA). Section 105(c)(3) of the Mine Act authorized Mr. Dye to file this case on his own behalf. This provision provides him with an opportunity to try to establish that he was discriminated against. Consequently, this case is not an appeal of MSHA's decision not to file a discrimination complaint on behalf of Mr. Dye, but it is a new, independent proceeding brought by Mr. Dye on his own behalf. I do not have the authority to review MSHA's investigation to determine whether it was competent or to determine whether MSHA's decision to not bring a case was defensible. Neither MSHA nor the Secretary of Labor is a party in this proceeding. If Mr. Dye and MRSI are not able to settle this case, Mr. Dye will be required to present evidence at a hearing to establish that MRSI discriminated against him in violation of section 105(c) of the Mine Act, as described above.

1. MRSI shall file its answer in this case on or before **September 20, 2002**. In order to encourage the parties to settle this case, counsel for MRSI shall contact Mr. Dye to discuss settlement. The parties shall confer as often as necessary to negotiate a settlement. If the parties are unable to settle the case, they shall attempt to narrow the issues, enter into stipulations, and discuss proposed hearing dates.

2. On or before **October 18, 2002**, the parties shall initiate a conference call with me to discuss the status of the case, potential hearing dates, and other matters that they wish to discuss.

Richard W. Manning  
Administrative Law Judge

Distribution:

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RWM