

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET N.W., 6TH FLOOR
WASHINGTON, D.C. 20006

December 15, 1995

OLIVER J. BOUTET, : DISCRIMINATION PROCEEDING
Complainant :
v. : Docket No. WEST 95-373-DM
AMES CONSTRUCTION COMPANY, : WE MD 95-07
Respondent :
: Barrick Goldstrike Mine

ORDER OF DISMISSAL

Before: Judge Merlin

On May 15, 1995, the complainant, Oliver J. Boutet, filed with the Commission a complaint of discrimination under section 105(c) of the Federal Mine Safety and Health Act of 1977. On May 17, 1995, the Commission sent Mr. Boutet a letter informing him that additional information was needed to be filed in order for his case to be processed.

Having received no response to the May 17 letter, an order to show cause was issued to Mr. Boutet on June 27, 1995, directing him to submit the information. Mr. Boutet was told that if he failed to respond to the June 27 order his complaint would be dismissed. The order was sent to Mr. Boutet certified mail return receipt requested but was returned to the Commission marked unclaimed.

On October 18, 1995, a second order to show cause was sent to Mr. Boutet because a review of the file showed that both the May 17 letter and June 27 order to show cause were mailed to Mr. Boutet at the address listed on the letter that had been sent by MSHA advising Mr. Boutet that no discrimination occurred. This was an error because Mr. Boutet's letter of complaint to the Commission lists a different address. Given the discrepancy in the mailing address, a new show cause order was issued and the Complainant was furnished with copies of the May 17 letter and the June 27 show cause order. The October 18 order was sent certified mail return receipt requested but was returned to the Commission marked **Attempted not known, Insufficient address@**. A handwritten notation on the envelope indicates that a suite number was necessary for this address. On December 13, 1995, my law clerk attempted to contact Mr. Boutet by telephone. However, no phone number was listed for him in the Reno, Nevada area.

Under Commission rule 2700.7(c), 29 C.F.R. ' 2700.7(c), service is complete upon mailing when sent by certified mail. See, Matter of Park Nursing Center, Inc., 766 F.2d 261 (6th Cir. 1985); Cf. Fed. R. Civ. P.4(c)(2)(C)(ii), 5(b).

In light of the foregoing, it is **ORDERED** that the discrimination complaint be **DISMISSED**.

Paul Merlin
Chief Administrative Law Judge

Distribution: (Certified Mail)

Mr. Oliver Boutet, 1150 Terminal Way, Reno, NV 89502

Ames Construction Company, 2001 Griffin, Carlin, NV 89822

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