

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1244 SPEER BOULEVARD #280  
DENVER, CO 80204-3582  
303-844-3993/FAX 303-844-5268

August 13, 1998

SECRETARY OF LABOR,	:	DISCRIMINATION PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 98-6-DM
on behalf of JEFFERY S. SILL,	:	
Complainant	:	
	:	
v.	:	
	:	Lakeview Rock Products
<b>LAKEVIEW ROCK PRODUCTS,:</b>	:	Mine ID 42-01975
Respondent	:	

**DECISION**

Appearance: Edward Falkowski, Esq., Office of the Solicitor, U.S. Department of Labor,  
Denver, Colorado,  
for Complainant;  
Gregory M. Simonsen, Esq., Kirton & McConkie,  
Salt Lake City, Utah,  
for Respondent.

Before: Judge Cetti

This proceeding concerns a complaint of alleged discrimination filed by the Secretary of Labor against the Respondent pursuant to section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 815(c)(2) (the AAct@). The complaint was filed on behalf of Jeffery S. Sill, a former employee of the Respondent who claimed that his employment was illegally terminated on March 26, 1997. The Respondent denied any discrimination and it contended that Mr. Sill quit his employment with Respondent.

Mr. Sill was employed by Respondent as a loader operator. Three weeks after his alleged unlawful termination on March 26, 1997, Mr. Sill returned to work as a loader operator with another employer. Thus, at the time the original complaint was filed on October 6, 1997, Mr. Sill was still fully employed as loader operator and claimed only for the three weeks of back-pay that it took him to find the new job in April 1997.

In early December 1997, however, Mr. Sill was laid off from his new employment due to the slack winter season. He remained unemployed for a period of time and then returned to work

for yet another employer as a loader operator. He is still continuing with that employment at the present time.

When the parties were unable to resolve their differences, the case was set for hearing. The hearing included the direct and cross-examination of the Complainant. At the end of the hearing, the parties in open court agreed to settle the case. Under the terms of the agreement that the parties entered into the record, Respondent without admitting a violation of section 105(c) of the Act agreed to pay \$1,000.00 to Complainant to cover any losses he may have and pay a civil penalty of \$1,500.00 to MSHA. The parties also agreed as a part of the settlement that there will be no 110(c) action against any agent of the Respondent based upon any allegation of unlawful discrimination against Jeffery S. Sill under section 105(c) of the Act.

Based upon the exhibits and the testimony given at the hearing, I approve the settlement entered into the record at the hearing. I find it is consistent with the statutory criteria set forth in ' 110(i) of the Act.

### **ORDER**

Respondent, if it has not previously done so, is **ORDERED TO PAY** within the next 30 days, \$1,000.00 to Jeffery S. Sill and a civil penalty of \$1,500.00 to the Secretary of Labor. Upon receipt of timely payment, this case is dismissed.

August F. Cetti  
Administrative Law Judge

Distribution:

Edward Falkowski, Esq., Office of the Solicitor, U.S. Department of Labor, 1999 Broadway, Suite 1600, Denver, CO 80202-5716 (Certified Mail)

Gregory M. Simonsen, Esq., KIRTON & McCONKIE, 1800 Eagle Gate Tower, 60 East South Temple, P.O. Box 45120, Salt Lake City, UT 84145-0120 (Certified Mail)

/sh