

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1244 SPEER BOULEVARD #280
DENVER, CO 80204-3582
303-844-3577/FAX 303-844-5268

July 18, 1997

TIMOTHY CARPENTER,	:	DISCRIMINATION PROCEEDING
Complainant	:	
	:	Docket No. WEST 96-319-DM
	v. :	
	:	Smoky Valley Common Operation
ROUND MOUNTAIN GOLD CORP.,	:	
Respondent	:	Mine ID No. 26-00594

ORDER GRANTING MOTION FOR SUMMARY DECISION
ORDER OF DISMISSAL

Timothy Carpenter filed a complaint of discrimination against Round Mountain Gold Corp. (Round Mountain) under section 105(c)(3) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 815(c)(3)(Mine Act). Mr. Carpenter was terminated from his employment by Round Mountain following an accident that occurred on March 8, 1996. In his discrimination complaint, Mr. Carpenter alleges that he was denied peer review of his termination because he called MSHA to discuss the accident. Round Mountain contends that it terminated Carpenter for just cause and that it did not know that he had contacted MSHA until after the decision was made to deny his request for peer review.

On June 10, 1997, Round Mountain filed a motion for summary decision under 29 C.F.R. ' 2700.67. Mr. Carpenter did not respond to the motion. Summary decision is appropriate only if the entire record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows: (1) that there is no genuine issue as to any material fact; and (2) that the moving party is entitled to summary decision as a matter of law. Id. If a party does not respond to a motion for summary decision, a summary decision, if appropriate, shall be entered against him. 29 C.F.R. ' 2700.67(c). Based on the record in this case, I find that summary decision is appropriate and grant Round Mountain's motion.

The accident that preceded Mr. Carpenter's termination occurred on March 8, 1996. He was sent home that day and was called back to the mine on March 12, 1996. On that date he was informed that he was being terminated from his employment. Round Mountain's employee handbook contains a peer review policy. Under that policy, an employee may request that an adverse action taken against him be submitted to a peer review committee to determine the propriety of the action. The request for peer review must be made within three days of the adverse action. The general manager of the mine has the authority to deny the request. The peer review committee is composed of five hourly employees. Mr. Carpenter contends that he called

General Manager Steve Mueller on March 15, 1996, to request peer review. Round Mountain contends that he did not request peer review until April 8, 1996.

On April 8, 1996, Mr. Carpenter called the human resources department at the mine to check on the status of his request for peer review. A human resources employee told Carpenter that she would check on it, and called him back a few minutes later to tell him that she would Aget one started.@ (Carpenter dep. at 105). After these conversations, Mr. Carpenter called MSHA for the first time. (Carpenter dep. at 39, 105). An MSHA official told Mr. Carpenter that MSHA would investigate the March 8 accident. Carpenter called the human resources department again on April 9, 1996, and was told that his request for peer review had been denied. He did not tell anyone at the mine on April 8 or 9 that he had contacted MSHA about the March 8 accident. (Carpenter dep. at 111).

In an affidavit, Mr. Mueller testified that he made the decision terminate Mr. Carpenter and to deny him peer review. His decision to terminate Mr. Carpenter could not have been linked to Mr. Carpenter=s call to MSHA, since the call was made a month later. Mr. Mueller testified that his decision to deny Mr. Carpenter=s request for peer review was not in any way influenced or caused by the fact that Mr. Carpenter contacted MSHA. Indeed, he testified that he had no knowledge at the time he made that decision that Mr. Carpenter had called MSHA. He based his decision in large part on the fact that he believed that Mr. Carpenter had not made a timely request for peer review. The record does not contain evidence to refute Mr. Mueller=s testimony. Thus, there are no genuine issues of material fact and Round Mountain is entitled to summary decision as a matter of law. The date that Mr. Carpenter first requested peer review is not material to my determination.

Many of the allegations set forth in Mr. Carpenter=s complaint of discrimination state that he was treated unfairly by Round Mountain. I do not have the authority to determine whether Mr. Carpenter=s discharge was fair or reasonable. The ACommission does not sit as a super grievance board to judge the industrial fairness, reasonableness, or wisdom of an operator=s employment policies except insofar as those policies may conflict with rights granted under section 105(c) of the Mine Act.@ *Delisio v. Mathies Coal Company*, 12 FMSHRC 2535, 2544 (December 1990)(citations omitted).

Based on the record in this case, as summarized above, I find that summary decision is appropriate. Accordingly, Round Mountain=s motion for summary decision is **GRANTED** and this proceeding is hereby **DISMISSED**.

Richard W. Manning
Administrative Law Judge

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