

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

September 15, 2000

SECRETARY OF LABOR,	:	TEMPORARY REINSTATEMENT
MINE SAFETY AND HEALTH	:	PROCEEDING
ADMINISTRATION, on behalf of	:	
GARY DEAN MUNSON	:	Docket No. WEVA 2000-40-D
Complainant	:	MORG-CD-2000-01
	:	
v.	:	
	:	Federal No. 2
EASTERN ASSOCIATED COAL CORP.	:	Mine ID 46-01456
Respondent	:	

ORDER NOTING WITHDRAWAL OF MOTION

On July 6, 2000, Respondent filed a "Motion to Stay 'Economic' Reinstatement."¹ On July 20, 2000, Complainant filed a response.² Respondent ultimately determined to withdraw its motion and, on August 14, 2000, filed a paper entitled: "Withdrawal of Respondent Eastern Associated Coal Corporation's Motion to Stay 'Economic' Reinstatement." While titled, in part, "withdrawal" the text stated that Respondent "moves this Court to withdraw" its motion and requested "that its withdrawal of said Motion be granted." The Secretary did not file a response.

Respondent's "withdrawal" is framed somewhat inconsistently with its position voiced during a telephonic conference after the "stay" motion had been filed. There, Respondent took the position that I no longer had jurisdiction in the Temporary Reinstatement Proceeding. The Secretary took the opposite position in her response to the original motion.

Respondent's "withdrawal" obviates the need to resolve the jurisdictional issue. While

¹ On March 10, 2000, following a hearing, I had ordered that Complainant be temporarily reinstated pending resolution of a discrimination complaint likely to be filed by the Secretary on his behalf. The parties subsequently agreed to economic reinstatement. I was not notified of the agreement and no request was made to amend the Order of Temporary Reinstatement. Complainant later decided that he would rather return to work and by letter dated June 21, 2000, his counsel requested that he be "immediately return[ed] to his former job." Respondent declined the request. When the dispute was brought to my attention, I initially placed the burden on Respondent to seek modification of the temporary reinstatement order. I later reconsidered that decision.

² The response erroneously carried the caption of the subsequently filed discrimination case, rather than the temporary reinstatement proceeding.

there is some authority for the proposition that a motion may not be withdrawn without leave of court, the general and, in my opinion, more preferred rule is that, in the absence of prejudice to the opposing party, no such permission is required and withdrawal of a motion leaves the record as it stood prior to the filing of the motion. *See, gen. 56 Am. Jur. 2^d*, Motions, Rules and Orders, § 22.

Respondent's motion has been effectively withdrawn. The record on the temporary reinstatement proceeding stands as it was prior to the filing of the motion.

Michael E. Zielinski
Administrative Law Judge

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