

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, Suite 1000
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

January 19, 2000

MARY JOHNSON, : DISCRIMINATION PROCEEDING
Complainant :
v. : Docket No. WEVA 99-81-D
: MORG CD 99-02
CONSOLIDATION COAL COMPANY, :
Respondent :
: Loveridge No. 22 Mine
: Mine ID No. 46-01433

DECISION

Appearances: Katherine L. Dooley, Esq., The Dooley Law Firm, Charleston,
West Virginia, on behalf of Complainant;
Elizabeth S. Chamberlin, Esq., Consol, Inc., Pittsburgh, Pennsylvania,
on behalf of Respondent.

Before: Judge Melick

Hearings under Section 105(c)(3) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 *et seq.*, the "Act," commenced in this case on December 21, 1999, in Fairmont, West Virginia. Those proceedings and the bench decision that followed are set forth below with only non-substantive changes:

Judge Melick: We've had an extensive pre-trial conference this morning, and as I understand from this conference the Complaint in this case is that the Consolidation Coal Company delayed, at least several times, accepting a Workers' Compensation claim from the Complainant for injuries she sustained while passing through a man-door in the subject mine, thereby delaying her Workers' Compensation payments. In this regard the Complainant seeks as remedy, interest on the late Workers' Compensation benefits she received. Now, is that a correct statement of the Complaint?

Attorney Dooley: Yes, Your Honor.

Judge Melick: All right. I understand then at this time you have a motion, Ms. Chamberlin?

Attorney Chamberlin: Yes, Your Honor. Consolidation Coal Company moves to dismiss the complaint for failure to state a claim under the Mine Act.

Judge Melick: As I said in the pre-trial conference, that Complaint does

not come within the purview of section 105(c)(1) of the Mine Act.¹ A remedy may exist with the Workers' Compensation laws of West Virginia but it's not the purpose of the Mine Act to provide relief under these circumstances. The filing of a Workers' Compensation claim is not as presented here, in itself, a protected activity under the Mine Act and without any other claim of protected activity, the Complainant cannot prevail in this case under section 105(c). As I say, if there is any remedy for delaying Workers' Compensation benefits under the present circumstances it may be under West Virginia Workers' Compensation law. These proceedings are therefore dismissed.

ORDER

The dismissal of these proceedings is hereby confirmed in accordance with Commission Rule 69(a), 29 C.F.R. § 2700.69(a).

Gary Melick
Administrative Law Judge

Distribution:

¹ Section 105(c)(1) of the Act provides as follows:

No person shall discharge or in any manner discriminate against or cause to be discharged or cause discrimination against or otherwise interfere with the exercise of the statutory rights of any miner, representative of miners or applicant for employment in any coal or other mine subject to this Act because such miner, representative of miners or applicant for employment has filed or made a complaint under or related to this Act, including a complaint notifying the operator or the operator's agent, or the representative of the miners at the coal or other mine of an alleged danger or safety or health violation in a coal or other mine, or because such miner, representative of miners or applicant for employment is the subject of medical evaluations and potential transfer under a standard published pursuant to section 101 or because such miner, representative of miners or applicant for employment has instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding, or because of the exercise by such miner, representative of miners or applicant for employment on behalf of himself or others of any statutory right afforded by the Act.

Katherine L. Dooley, Esq., The Dooley Law Firm, P.O. Box 11270, 815 Quarrier St., Suite 311,
Charleston, WV 25339-1270 (Certified Mail)

Elizabeth S. Chamberlin, Esq., Consolidation Coal Company, 1800 Washington Road,
Pittsburgh, PA 15241 (Certified Mail)

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