

July 2022

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Docket Nos. YORK 2022-0003 et al. (PIR Judge Young, 6/28/2022)

COMMISSION ORDERS

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710

July 29, 2022

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

COUNTY LINE STONE CO., INC.

Docket No. YORK 2022-0003
A.C. No. 30-00026-541944

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

CONSOL PENNSYLVANIA COAL
COMPANY LLC

Docket No. PENN 2021-0108
A.C. No. 36-07416-539405

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

RAMACO RESOURCES, LLC

Docket No. WEVA 2022-0260
A.C. No. 46-09495-549775

BEFORE: Traynor, Chair; Althen and Rajkovich, Commissioners

ORDER

BY THE COMMISSION:

These captioned cases arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”), and are currently before Administrative Law Judge Michael G. Young. The Secretary filed a Petition for Interlocutory Review with the Commission pursuant to Commission Procedural Rule 76, 29 C.F.R. § 2700.76. The Secretary’s petition seeks review of the Judge’s apparent intention to not grant the Secretary’s motions to approve settlement. Upon consideration of this petition and the case records, we conclude that because the Judge has yet to rule upon the Secretary’s motions, the Secretary’s petition is premature. In the absence of an interlocutory ruling by the Judge, we deny the Secretary’s Petition for Interlocutory Review.

More specifically, before the Judge, the Secretary filed motions to approve settlement which contained a proposal to vacate one or more citations. In response, the Judge asked if the Secretary could certify that the decision to vacate any citation was independent from, and not contingent upon, the compromise or settlement of other citations in that case. Instead of providing the Judge with his requested assurance, the Secretary filed motions for certification of interlocutory review with the Judge, requesting that the Judge certify to the Commission the question of the Secretary's discretion to vacate a contested citation as part of a settlement. On June 28, 2022, the Judge issued three separate orders, each denying the Secretary of Labor's respective motion for certification of an interlocutory ruling.

As the Secretary's petition to the Commission recognizes, the same controlling question of law is currently on review before the Commission in *Crimson Oak Grove Resources*, SE 2021-0112 et al. Specifically, in *Crimson Oak*, the Commission granted interlocutory review of "of the Judge's orders denying the motions and the issue of whether section 110(k) of the Mine Act authorizes review of the Secretary's decision to vacate a citation in the context of a settlement, when the vacatur is contingent upon the resolution of other citations." *Crimson Oak*, Order at 2 (March 2, 2022) (emphasis added). Notably, in these captioned cases which are the subject of the Secretary's petition before us, the Judge has yet to issue an order either granting or denying the Secretary's motions to approve settlement.

For these reasons, the Secretary's petition is denied without prejudice.

/s/ Arthur R. Traynor, III
Arthur R. Traynor, III, Chair

/s/ William I. Althen
William I. Althen, Commissioner

/s/ Marco M. Rajkovich, Jr.
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ADMINISTRATIVE LAW JUDGE ORDERS

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., NW, SUITE N520
WASHINGTON, D.C. 20004-1720

July 11, 2022

ADMINISTRATIVE LAW JUDGE HEARINGS ORDER

Glynn F. Voisin, Chief Administrative Law Judge:

Federal Mine Safety and Health Review Commission Administrative Law Judges are committed to a high standard to protect the health and safety of all persons who may appear before them, during the Coronavirus 2019 (COVID-19) pandemic, while continuing the agency's mission. As of January 3, 2022, the Commission has resumed in-person hearings, but for the duration of this order all hearings are subject to its terms.

Commission Judges may, at their sole discretion, hold remote hearings (e.g. via Zoom) and in-person hearings. Judges also have the discretion to hold a hybrid hearing, that includes both in-person and video participation. Commission Judges shall exercise this discretion within uniform parameters as set forth herein. Each Judge shall determine (1) when to use remote hearings in lieu of in-person hearings and (2) specific safety procedures to be used at a hybrid or in-person hearing.

In determining the type of hearing, Judges will consider current guidance and safety factors on a case-by-case basis. Judges will ensure all parties appearing pro se who are required to participate in a remote hearing have access to equipment, an internet connection, and other appropriate technology. Prior to conducting an in-person hearing, Judges will schedule a conference call with the attorneys and representatives of each of the parties to discuss, among other things, safety considerations for the in-person hearing. Persons who are not comfortable with travel or appearing in person, may request to attend the hearing via remote access (e.g. via Zoom). Judges may discuss the agency's workplace safety plan that outlines travel guidelines, protocols, and safety measures in conjunction with the CDC Community Levels¹.

The Judge will set a hearing location after considering CDC Community Levels using the [CDC COVID Data Tracker](#)² and the safety and health rules currently in place by the state and local public health entities. Where community levels are HIGH, Judges are discouraged from setting in-person hearings. If in-person participants are traveling to attend a hearing, the community levels of where they are traveling from need to be taken into account as well. In choosing a courtroom, the Judge will take into consideration the rules and requirements of the court or hearing facility, as well as all applicable federal, state, and local regulations and guidelines. If the hearing is to be a hybrid hearing, the Judge will also consider the availability of internet and technology needs in the courtroom.

¹ See <https://www.cdc.gov/coronavirus/2019-ncov/science/community-levels.html>

² See https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=all_states&list_select_county=all_counties&data-type=CommunityLevels

During the prehearing conference, the Judge will consider federal, state, local and courtroom requirements and inform the parties of such requirements. The requirements apply to all persons attending the in-person hearing. The discussion will also address who may enter the courtroom, when, and what safety measures, such as masks and physical distancing, must be implemented. No person may enter the courtroom, or the witness room without the permission of the Judge.

In addition to any federal, state, local and facility safety and health rules, all persons attending in-person hearings are also subject to the below requirements:

- **FMSHRC employees:**
 - All FMSHRC employees must adhere to the workplace safety plan and CDC guidance on physical distancing, mask wearing, vaccination attestation, and testing as well as quarantine, isolation, and official travel requirements.³
- **Visitors and Contractors:**
 - Visitors are defined as federal employees from other agencies such as the Department of Labor, spectators, and press. Contractors, for purposes of this order, are defined as individuals who have been contracted by FMSHRC to attend an in-person hearing for a specific purpose (e.g. a court reporter creating a transcript).
 - Visitors and contractors must attest to their vaccination status using the Certificate of Vaccination Form when Community Levels are MEDIUM or HIGH.⁴ Visitors and contractors who are considered not fully vaccinated (as defined by the CDC) shall show proof of a negative COVID-19 test result from a Food and Drug Administration authorized test taken within three days prior to entry to the in-person hearing when Community Levels are MEDIUM or HIGH. The Judge shall neither collect documentation to verify their vaccination attestation nor collect documentation to verify COVID-19 test results. Additionally, all visitors and contractors must adhere to the agency's workplace safety plan and CDC guidance on physical distancing and mask wearing.
- **Non-government Parties, Representatives and Witnesses:**
 - Persons who are not visitors or contractors as defined above, and who are parties, representatives of parties, or witnesses do not need to attest to their vaccination status

³ The employee vaccination requirement in Executive Order 14043 and the contractor vaccination requirement in Executive Order 14042 are the subject of an injunction issued by a Federal court. In accordance with OMB Guidance, and pending further notice, FMSHRC will take no action to enforce the vaccination requirements in those executive orders. The Office of the Chief Administrative Law Judge will continue to monitor developments on this issue and will comply with current vaccination policies.

⁴ The vaccination attestation form can be found on the Safer Federal Workforce website at <https://www.saferfederalworkforce.gov/downloads/CertificationVaccinationPRAv7.pdf>.

to attend an in-person FMSHRC hearing, and Judges shall not inquire into their vaccination status. However, they must adhere to the agency's workplace safety plan and CDC guidance on physical distancing and mask wearing.

Furthermore, in the event an in-person hearing is held in a location where the CDC Community Level is MEDIUM or HIGH, all persons attending the hearing, including visitors and contractors, as well as non-government parties, representatives, and witnesses, must present a completed FMSHRC COVID-19 Screening Tool form for review.⁵

The Judge may consider all factors, in totality, in determining if a remote hearing will be held and who may be present for the hearing. No single factor is dispositive.

These procedures shall remain in place until this order is vacated or otherwise modified by subsequent order.

SO ORDERED.

/s/ Glynn F. Voisin
Glynn F. Voisin
Chief Administrative Law Judge

⁵ The FMSHRC COVID-19 Screening Tool form is available in Appendix C of the agency's workplace safety plan. Individuals who plan to attend a hearing can also obtain a copy of the form by contacting a Judge's office.