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UMWA V. CONSOLIDATION COAL  
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION  
WASHINGTON, D.C.  
September 4, 1979

LOCAL UNION NO. 5429, UNITED MINE  
WORKERS OF AMERICA

v. Docket No. MORG 79-13

CONSOLIDATION COAL COMPANY

DECISION

This compensation proceeding arises under section 111 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §801 et seq. (1978) ["the Act"]. 1/ The United Mine Workers of America (UMWA) filed with the Commission on November 1, 1978, an application for compensation for work allegedly lost by two shifts of miners idled by a section 103(k) withdrawal order issued to Consolidation Coal Company (Consol) on August 14, 1978. 2/ On January 24, 1979, Administrative Law Judge Fauver granted Consol's motion to dismiss the application, finding that the applicant had failed to comply with the time limits set in Rule 29 of the Commission's Interim Procedural Rules, 3/ and had not shown a reasonable basis for the late filing of the compensation claim.

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1/ §111 of the Act provides in pertinent part:

If a coal ... mine or area of such mine is closed by an order issued under section 103 ... all miners working during the shift when such order was issued who are idled by such order shall be entitled, regardless of the result of any review of such order, to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than the balance of such shift. If such order is not terminated prior to the next working shift, all miners on that shift who are idled by such order shall be entitled to full compensation by the operator at their regular

rates of pay for the period they are idled, but for not more than four hours of such shift ... The Commission shall have authority to order compensation due under this section upon the filing of a complaint by a miner or his representative....

2/ §103(k) of the Act provides in pertinent part.

In the event of any accident ... in a coal ... mine, an authorized representative of the Secretary, when present, may issue such orders as he deems appropriate to insure the safety of any person....

3/ Interim Rule 29 provided:

An application for compensation shall be filed within 30 days after the commencement of the period the applicants are idled or would have been idled as a result of the order which gives rise to the claim.

On July 30, 1979, procedural rules replacing the interim rules became effective. Under the new rules the period for filing applications for compensation is increased to 90 days. 44 Fed. Reg. 38,230 (1979) (to be codified in 29 CFR §2700.35).

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The Commission granted the @@@A's petition for discretionary review to determine whether the administrative law judge erred in granting Consol's motion to dismiss. For the reasons that follow, we conclude that the 30-day filing period set forth in Interim Rule 29 for filing applications for compensation under the 1977 Act may be extended in appropriate circumstances and that such circumstances are present in this case. Accordingly, we reverse and remand for further proceedings consistent with this opinion.

On August 14, 1978, a Mine Safety and Health Administration (MSHA) inspector issued a section 103(k) withdrawal order at Consol's Arkwright Mine following a roof collapse that killed two miners. A. Neil Humphreys, a district safety inspector for the UMWA, was notified of the roof fall and inspected the area with federal, state, and company officials. Humphreys investigated the accident and determined, in his view, that certain miners had not been compensated pursuant to section 111 of the Act. Humphreys directed the union's health and safety committee to meet with management and request compensation; the committee's request was refused. On September 18, 1978, Humphreys and the health and safety committee met with management representatives. At this meeting the management representatives refused to pay the requested compensation or to provide Humphreys with a list of miners scheduled to work on the involved shifts. On September 28, 1978, management reiterated its position that no compensation was due under section 111.

In light of these events, Humphreys filed a discrimination complaint under section 105(c) of the Act, believing it to be the only course of action available to him. On October 2, 1978, an MSHA representative informed Humphreys that a compensation claim under section 111, rather than a discrimination complaint, was appropriate under the circumstances. He further informed Humphreys that there was a 30-day time limit on the filing of compensation claims. On November 1, 1978, the UMWA filed an application for compensation. 4/

On review, the UMWA argues that the 30-day filing period in Interim Rule 29 can be extended in appropriate circumstances and that such circumstances exist in this case. Consol urges that the judge properly concluded that the facts do not reveal a reasonable basis for extending the 30-day period to permit the late filing of the application for compensation. Consol contends also that the failure to file within the time limits prescribed by the Commission's rule "bars the agency from exercising jurisdiction over the matter". In Consol's view, *United Mine Workers of America v. Kleppe*, 561 F.2d 1258 (7th Cir. 1977), controls the Commission's decision in this case.

We reject Consol's arguments.

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4/ The facts recited are largely derived from an affidavit by Humphreys that was attached to the UMWA's opposition to Consol's motion to dismiss.

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In deciding whether a limitations period may be extended or tolled, the basic question "is one of legislative intent whether the right shall be enforceable ... after the prescribed time." *Burnett v. N. Y. Central R. R.*, 380 U.S. 424, 426 (1965). Unlike other provisions of the Act, however, (e.g., sections 105(a), 105(c)(3), and 106(a)(1)), Congress did not provide a time period for filing compensation claims under section 111. The 30-day limit at issue appeared in the Commission's Interim Procedural Rules. On the question of whether the 30-day filing period provided for in the Commission's interim rules can be extended in appropriate circumstances, the rules themselves shed little light. For this reason, we will interpret the rule in a manner consistent with the purposes of the statute it seeks to implement. See *Irvington Moore, Div. of U.S. Natural Resources v. O.S.H.R.C.*, 556 F.2d 431, 435 (9th Cir. 1977).

The Federal Mine Safety and Health Act of 1977 is a remedial statute, the "primary objective [of which] is to assure the maximum safety and health of miners." U.S. Senate, Committee on Human Resources, Subcommittee on Labor, Legislative History of the Federal Mine Safety and Health Act of 1977, 95th Cong., 2d Sess. at 634 (1978). Cf. *Freeman Coal Mining Company v. IBMOA*, 504 F.2d 741, 744 (7th Cir. 1974). The Senate Committee emphasized the remedial nature of the Act's compensation provision. The Committee stated:

This provision ... is not intended to be punitive, but recognizes that miners should not lose pay because of the operator's violations.... It is therefore a remedial provision which also furnishes added incentive for the operator to comply with the law. This provision will also remove any possible inhibition on the inspector in the issuance of closure orders. Legislative History, supra, at 634-635.

In interpreting remedial safety and health legislation, "[i]t is so obvious as to be beyond dispute that ... narrow or limited construction is to be eschewed ... [L]iberal construction in light of the prime purpose of the legislation is to be employed." *St. Mary's Sewer Pipe Co. v. Director, U.S. Bureau of Mines*, 262 F.2d 378, 381 (3rd Cir. 1959); *Phillips v. Interior Board of Mine Operations Appeals*, 500 F.2d 772, 782 (D.C. Cir. 1974), cert. denied, 420 U.S. 938 (1975). We believe that a liberal construction of the 30-day filing period for compensation claims requires a conclusion that the period may be extended in appropriate circumstances. See, *Dartt v. Shell*, 539 F.2d 1256, 1260 (10th Cir.

1976), aff'd by equally divided court, 434 U.S. 99 (1977); Kephart v. Institute of Gas Technology, 581 F.2d 1287 (7th Cir. 1978); Moses v. Falstaff Brewing Corporation, 525 F.2d 92 (8th Cir. 1975).

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Furthermore, while section 111 of the 1977 Act does not specify a time limit for the filing of compensation claims, the Act's discrimination provisions contain analogous time limits. In explaining section 105(c)(2)'s requirement that a discrimination complaint be brought within 60 days of the alleged violation, the Senate committee stated:

The bill provides that a miner may, within 60 days after a violation occurs, file a complaint with the Secretary. While this time-limit is necessary to avoid stale claims being brought, it should not be construed strictly where the filing of a complaint is delayed under justifiable circumstances. Circumstances which could warrant the extension of the time-limit would include a case where the miner within the 60 day period brings the complaint to the attention of another agency or to his employer, or the miner fails to meet the time limit because he is misled as to or misunderstands his rights under the Act. Legislative History, *supra*, at 624. 5/

The Senate committee also expressed a similar view as to the 30-day period provided for in section 105(c)(3) in which a miner can file a discrimination complaint on his own behalf if the Secretary determines that no violation has occurred: "[A]s mentioned above in connection with the time for filing complaints, this thirty-day limitation may be waived by the court in appropriate circumstances for excusable failure to meet the requirement." Legislative History, *supra*, at 625.

Thus, it is clear that Congress intended that the time periods for filing discrimination complaints under the 1977 Act can be extended in appropriate circumstances. Because section 105 and section 111 are both part of the same remedial legislation, they should be interpreted and applied in a consistent fashion. For this reason also, we conclude that the 30-day period provided in Interim Rule 29 for filing applications for compensation can be extended in appropriate circumstances.

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5/ *Baker v. North American Coal Company*, 8 IBMA 164, 179-80 (1977), *aff'd in part, rev. in part, Baker v. IBMOA*, 595 F.2d 746 (1978); decided under the discrimination provisions of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. §801 et seq. (1976)(amended 1977)("1969 Act"), reached a similar conclusion.

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We reject Consol's assertion that the Seventh Circuit's decision in *UMWA v. Kleppe*, *supra*, controls our decision in this case. First, *Kleppe* is distinguishable from the present case. Consol relies on the court's statement that the Secretary of Interior's regulation providing a 45-day period for the filing of compensation claims under section 110(a) of the 1969 Act, "is not a 'statute of limitations' designed to protect mine operators from stale claims, but simply a condition precedent to invocation of the agency's administrative jurisdiction...." 561 F.2d at 1261. 6/ The petitioner in *Kleppe*, however, had argued in the administrative proceedings below that the regulation setting a 45-day filing period was invalid; no argument was made before the agency that the time limit should have been tolled under the circumstances therein involved. Therefore, on appeal the court noted that, in view of the "vacuous record" in this regard, it could not determine what effect a refusal to toll the limitations period would have had on the regulation's validity. 561 F.2d at 1263.

Second, in *Kleppe* the court was faced with an interpretation by the Board of Mine Operations Appeals of a regulation promulgated by the Secretary of Interior under the 1969 Act. Here, the Commission is interpreting its own procedural rule under the 1977 Act.

Our next inquiry is whether the facts in the present case warrant an extension of the 30-day time limit. The primary purpose of a limitations period such as that contained in Interim Rule 29 is to assure fairness to the parties against whom claims are brought. *Burnett v. N.Y. Central R.R.*, *supra*. 380 U.S. at 428. Limitations periods

'promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and that the right of be free of stale claims in time comes to prevail over the right to prosecute them.' *Order of Railroad Telegraphers v. Railway Express Agency, Inc.*, 321 U.S. 342, 348-349. Moreover, the courts ought to be relieved of the burden of trying stale claims when a plaintiff has slept on his rights. *Burnett*, *supra*, 380 U.S. at 428.

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6/ We note, however, that, despite this characterization, the court analogized the regulation to the time limits for the filing of



pleadings under Fed. R. Civ. P. 12(a) and the taking of appeals from final judgments under Fed. R. App. P. 4, both of which can be extended for excusable neglect.

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To be balanced against this policy of repose, however, are considerations of whether "the interests of justice require vindication of the plaintiff's rights" in a particular case. *Id.*

In the present case, the applicant did not sleep on its rights. Rather, from the time that it first discovered the potential claim it attempted to secure compensation for the idled miners. This was done first through a request for payment made by the health and safety committee, then through a meeting with management representatives, followed by an attempt to secure relief through the filing of a discrimination complaint, and, finally, filing an application for compensation within 30 days after being informed that this was the proper course to follow. Furthermore, Consol does not argue, and the record does not indicate, that it in any manner relied on the policy of repose embodied in Interim Rule 29's 30-day filing period or was otherwise prejudiced. In fact, as discussed above, it had notice of the claim to compensation soon after the events giving rise to the claim occurred. For these reasons, we conclude that the judge erred in finding that a reasonable basis was not shown for allowing the late filing of the application for compensation in this case.

Accordingly, we reverse and remand for further proceedings consistent with this decision.