

CCASE:  
RONALD TOLBERT V. CHANEY CREEK COAL  
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION  
WASHINGTON, D.C.  
October 31, 1989

RONALD TOLBERT

v. Docket No. KENT 86-123-D

CHANEY CREEK COAL CORPORATION

BEFORE: Ford, Chairman; Backley, Doyle, Lastowka and Nelson,  
Commissioners

ORDER

BY THE COMMISSION:

In this discrimination proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1982) ("Mine Act" or "Act"), complainant Ronald Tolbert has filed with the Commission a Motion to Reopen and Remand. The 1987 decisions of the administrative law judge finding discrimination and awarding complainant relief became final decisions of the Commission because the Commission did not grant the petition for discretionary review filed by Chaney Creek Coal Corporation ("Chaney Creek") and Chaney Creek did not petition for review in a United States Court of Appeals. 9 FMSHRC 580 (March 1987)(ALJ); 9 FMSHRC 929 (May 1987)(ALJ); 30 U.S.C. 816 and 823(d)(1). Shortly thereafter, complainant filed a motion to reopen the proceeding, which motion was denied by the Commission. See Ronald Tolbert v. Chaney Creek Coal Corp., 9 FMSHRC 1847 (November 1987).

Complainant's present motion seeks further proceedings before the Commission to determine (1) additional back pay and attorney's fees that complainant asserts are due, and (2) whether John Chaney, owner of respondent Chaney Creek, is the alter ego of the company and, therefore, personally liable for the relief due complainant. Counsel for the Secretary of Labor has submitted a Motion for Leave to File a Memorandum as Amicus Curiae in support of complainant's motion. No response to these

motions has been filed by Chaney Creek.

Upon consideration of the Secretary's motion, it is granted and the Secretary's amicus memorandum is accepted this date for filing in this proceeding.

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Concerning complainant's motion to reopen and remand, complainant has failed to identify any specific basis or authority upon which the Commission can rely to reopen this proceeding to consider the merits of his request for relief at this time. Complainant is accordingly directed to file with the Commission a supplemental memorandum on or before November 27, 1989, setting forth (1) the jurisdictional authority permitting the reopening of this matter before the Commission for the purpose of considering the issues raised in complainant's motion and (2) his position as to why, given the May 1988 enforcement of the Commission judge's decisions in this proceeding by the United States Court of Appeals for the Sixth Circuit, the Court of Appeals is not the proper tribunal before which to pursue the alter ego issue (see 30 U.S.C. 816(b))

The Secretary of Labor as amicus may also file a memorandum within this time identifying the jurisdictional basis for its view that the Commission may reopen this case for further proceedings. Respondent Chaney Creek may file a response to any submission by Tolbert or the Secretary within 15 days of the date of service of such memorandum. No memorandum submitted in response to this order shall exceed 15 pages.

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

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