

CCASE:
ODELL MAGGARD V. CHANEY CREEK COAL,
AND ODELL MAGGARD (MSHA) V. DOLLAR BRANCH COAL,
& CHANEY CREEK COAL
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
June 5, 1990

ODELL MAGGARD

v. Docket No. KENT 86-1-D

CHANEY CREEK COAL COMPANY

and

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA), on behalf
of ODELL MAGGARD

v. Docket No. KENT 86-51-D

DOLLAR BRANCH COAL CORPORATION
and CHANEY CREEK COAL
CORPORATION

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

ORDER

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

In our most recent decision in this discrimination case, on remand from an opinion of the United States Court of Appeals for the District of Columbia Circuit (*Chaney Creek Coal Corp. v. FMSHRC, etc.*, 866 F.2d 1424 (1989), *aff'g in part, rev'g in part, Odell Maggard v. Chaney Creek Coal Co., etc.*, 9 FMSHRC 1314 (August 1987)), we reinstated Commission Administrative Law Judge Gary Melick's initial award of attorney's fees

and remanded this matter to the judge for further proceedings with respect to interest on back pay. 12 FMSHRC 380, 383-86 (March 1990). Following our decision, private counsel for complainant Odell Maggard filed with the Commission a Motion for Instructions Concerning Supplemental Fees on Remand to Administrative Law Judge. No response to this motion has been received from the other parties. Upon consideration of the motion, it is granted as explained below.

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In this motion, Maggard requests the Commission to instruct the judge to determine the additional amount of attorney's fees owed Maggard in connection with his private legal representation in review proceedings before the Commission and the D.C. Circuit subsequent to the judge's initial decisions in this matter in 1986. Maggard points to the language in section 105(c)(3) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1982)("Mine Act"), providing that a successful complainant in Mine Act discrimination proceedings may be awarded attorney's fees "reasonably incurred...for, or in connection with, the institution and prosecution" of such proceedings. 30 U.S.C. § 815(c)(3).

A similar motion for attorney's fees incurred in administrative and court appellate proceedings was acted upon by the Commission in *Robert Simpson v. Kenta Energy, Inc.*, 11 FMSHRC 1638 (September 1989). There, we remanded the case to Commission Administrative Law Judge James A. Broderick for "resolution of whether the attorney's fees being sought for administrative and court appeal proceedings are properly awardable under the Mine Act and, if so, for all appropriate findings of fact relevant to determination of the amount to be awarded." 11 FMSHRC at 1639. On remand, Judge Broderick issued a Partial Decision on Remand concluding that such post trial fees were recoverable and that a Commission administrative law judge may properly make findings and determinations with respect to the appropriate amount of any such fee award. *Robert Simpson v. Kenta Energy Inc.*, 11 FMSHRC 2543, 2544-46 (December 1989)(ALJ).

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We follow here the course that we took in Simpson, supra. In the course of the remand proceedings previously ordered, the judge is also instructed to rule of the question of whether attorney's fees incurred in connection with appellate proceedings are awardable under the Mine Act and, if so, to enter all appropriate factual findings relevant to determination of the amount to be awarded.

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