

CCASE:
MSHA V. THE HELEN MINING CO
DDATE:
19921217
TTEXT:

~1993

December 17, 1992

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	
on behalf of JOSEPH A. SMITH	:	
	:	
v.	:	Docket Nos. PENN 92-57-D
	:	PENN 92-58-D
THE HELEN MINING COMPANY	:	

BEFORE: Holen, Chairman; Backley, Doyle and Nelson, Commissioners

ORDER

BY THE COMMISSION:

On November 18, 1992, Helen Mining Company ("Helen") filed an Application for Stay ("Application") of Administrative Law Judge Roy J. Maurer's September 17, 1992, assessment of a civil penalty and award of back pay in this matter. 14 FMSHRC 1626, 1645 (September 1992)(ALJ).(Footnote 1) In the alternative, Helen requests that the Commission permit it to deposit the civil penalty and back pay award into an interest-bearing escrow account. Helen stated in its Application that it intended to appeal the judge's decision to the United States Court of Appeals for the District of Columbia Circuit(Footnote 2). It requests that the stay or escrow arrangement remain in effect until such time as a final appellate determination in these proceedings has been reached.

The Secretary responded to the Application on November 23, 1992. She states that she does not oppose the escrow relief requested by Helen so long as Helen deposits the back pay award in the amount of \$45,450.37, plus interest due on that amount under the terms of the judge's order, and the civil penalty in the amount of \$10,000 in bona fide interest-bearing escrow accounts. The Secretary further requests that, in the event the judge's order is upheld on appeal, any applicable pre- and/or post-judgment interest be included in the awards to Complainant Joseph A. Smith and the Secretary,

1 Helen filed a Petition for Discretionary Review of the judge's decision with the Commission, but no two Commissioners voted to grant the petition. As a consequence, the judge's decision became the final decision of the Commission 40 days after it was issued. 30 U.S.C. 823(d)(1).

2 Helen filed its petition for review in the D.C. Circuit on November 18, 1992.

~1994

respectively. Counsel for the Secretary has advised the Commission, by telephone, that Complainant Joseph A. Smith agrees with the Secretary's position.

Helen filed its Application pursuant to Rule 18 of the Federal Rules of Appellate Procedure, which provides that an "[a]pplication for a stay of a decision or order of an agency proceeding pending direct review in a court of appeals shall ordinarily be made in the first instance to the agency." An escrow arrangement has the effect of maintaining the status quo in this litigation during appeal. Section 106(a)(1) of the Mine Act, 30 U.S.C.

816(a)(1), provides that if a final decision of the Commission is appealed to a court of appeals, the court shall have exclusive jurisdiction of the proceeding once the record of the proceeding before the Commission is filed with the court. The record in the present proceeding is due to be filed with the D.C. Circuit on January 7, 1993. The Commission, therefore, has jurisdiction to consider Helen's Application at this time.

Under the facts presented and given the Secretary's and the complainant's lack of opposition to Helen's Application to place the civil penalty and back pay award, plus interest, into escrow accounts, Helen's Application is granted to the extent that the escrow accounts shall be established subject to the conditions set forth in the Secretary's response to the Application.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner