

CCASE:
SHERRELL STEVEN REID V. KIAH CREEK
DDATE:
19930331
TTEXT:

March 31, 1993

SHERRELL STEVEN REID	:	
	:	
v.	:	Docket No. KENT 92-237-D
	:	
KIAH CREEK MINING COMPANY	:	

DIRECTION FOR REVIEW AND ORDER

In this discrimination proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1988)(the "Mine Act"), the parties have filed a "Joint Petition for Discretionary Review/Joint Motion to Vacate ALJ Decision, Approve Settlement Agreement, and Dismiss Proceeding." For the reasons set forth below, the petition and joint motion are granted.

On March 10, 1993, Administrative Law Judge Avram Weisburger issued a decision finding that the complainant had not established a violation under section 105(c) of the Mine Act. Prior to the issuance of the judge's decision, the parties had engaged in settlement negotiations. On March 12, 1993, they entered into a settlement agreement. Upon informing the judge's office of the settlement, they learned that the judge had already issued his decision.

The judge's jurisdiction in this matter terminated when his decision was issued on March 10, 1993. 29 C.F.R. 2700.65(c). Under the Mine Act and the Commission's procedural rules, relief from a judge's decision may be sought by filing with the Commission a petition for discretionary review within 30 days of the decision. 30 U.S.C. 823(d)(2); 29 C.F.R. 2700.70. The joint petition for discretionary review is granted.

Oversight of proposed settlements is, in general, committed to the Commission's sound discretion. See, e.g., Pontiki Coal Corp., 8 FMSHRC 668, 674-675 (May 1986). The parties attached to their joint motion a copy of their settlement agreement, which is signed by Kiah Creek's President and by Complainant Reid. We have reviewed the settlement agreement, motion, and record and, upon full consideration, we approve the settlement and grant the motion. See, Duval Corporation, 8 FMSHRC 662 (May 1986); Western Fuels - Utah, Inc., 11 FMSHRC 134 (February 1989); Birchfield Mining, 11 FMSHRC 1428 (August 1989); Medusa Cement, 12 FMSHRC 1913 (October 1990).

* We note that the judge issued his decision shortly after receipt of final briefs. Parties should inform a judge when settlement negotiations may obviate the need for a ruling on the merits.

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Accordingly, this proceeding is dismissed.

Arlene Holen, Chairman

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner