

CCASE:  
RANDALL PATSY V. BIG B MINING  
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION  
1730 K STREET NW, 6TH FLOOR  
WASHINGTON, D.C. 20006

RANDALL PATSY :  
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 : DISCRIMINATION PROCEEDING  
 :  
 v. : DOCKET NO. PENN 94-132-D  
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 BIG "B" MINING COMPANY :  
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ORDER

For the second time, Complainant Randall Patsy appeals from Administrative Law Judge Jerold Feldman's dismissal of this discrimination proceeding, arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. ("Mine Act"). Based on Patsy's apparent wish to pursue this case despite earlier statements suggesting the contrary, the Commission vacated the judge's initial dismissal of this matter, remanded the case, and ordered that the judge schedule it for hearing. 16 FMSHRC 1237, 1237-38 (June 1994). On remand, the judge issued an Order on Remand and Notice of Hearing, setting a hearing date of September 20, 1994. Following receipt of that order and review of a Commission decision transmitted to the parties by the judge, Patsy wrote to the judge and stated that he doubted that he could prove that he was a "miner" and requested the name of "some other agency I should contact." Thereafter, Patsy communicated with the judge's office twice by telephone and last stated, on August 5, 1994, that he was consulting with a lawyer and would let the judge know what the lawyer recommended. On August 16, 1994, the judge issued an Order Reinstating Dismissal, noting that he had not heard from Patsy nor had his attorney filed an appearance in the proceeding.

On August 19, 1994, Patsy wrote to the judge, stating that he was appealing the dismissal and that he felt he had a good chance of winning the case.

The judge's jurisdiction in this matter terminated when his decision was issued on August 16, 1994. Commission Procedural Rule 69(b), 29 C.F.R. 2700.69(b) (1993). Under the Mine Act and the Commission's procedural rules, relief from a judge's decision may be sought by filing a petition for discretionary review within 30 days of its issuance.

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30 U.S.C. 823(d)(2); 29 C.F.R. 2700.70(a). We deem Patsy's letter to be a timely filed Petition for Discretionary Review, which we grant. See, e.g., Middle States Resources, Inc., 10 FMSHRC 1130 (September 1988).

The Commission's procedural rules provide that a judge shall issue an order to show cause prior to entry of any order of dismissal unless a party fails to attend a scheduled hearing, in which case an order to show cause is not required. 29 C.F.R. 2700.66(a) and (b)(1993). Although Patsy's equivocation has tried the patience of the judge and the Commission, the judge must nevertheless follow the Commission's rules. Accordingly, we remand this matter to the judge for disposition in accordance with the Commission's rules. In reopening this matter, we express no views on the merits of the case.

For the reasons set forth above, we vacate the judge's order reinstating dismissal and remand this matter for further appropriate proceedings.

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Mary Lu Jordan, Chairman

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Arlene Holen, Commissioner