

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N

WASHINGTON, D.C. 20004-1710

April 29, 2014

FRED ESTRADA

v.

RUNYAN CONSTRUCTION, INC.

:
:
:
:
:
:

Docket No. CENT 2013-311-DM

BEFORE: Jordan, Chairman; Young, Cohen, Nakamura, and Althen, Commissioners

ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012). On April 18, 2014, Runyan Construction, Inc. (“Runyan”) filed with the Commission a document entitled “Petition for Discretionary Review.” Runyan seeks review of a Decision on Liability issued by an Administrative Law Judge on March 31, 2014, in which he ruled that Runyan had discriminated against Fred Estrada in violation of section 105(c) of the Mine Act, 30 U.S.C. § 815(c). 36 FMSHRC ___, Docket No. 2013-311-DM, slip op. at 25-26 (Mar. 31, 2014) (ALJ).

In his decision, the Judge stated that he “retains jurisdiction in this matter until the specific remedies to which Mr. Estrada is entitled are resolved and finalized. . . . Accordingly, this decision will not become final, and therefore not appealable, until an order granting specific relief and awarding monetary damages has been entered.” *Id.* at 26. Consequently, his decision is interlocutory in nature. Section 113(d) of the Mine Act, 30 U.S.C. § 823(d), which governs the filing of petitions for discretionary review, only allows for review of final decisions.

Pursuant to Commission Procedural Rule 76, 29 C.F.R. § 2700.76, the Commission may review a Judge’s ruling, prior to the Judge’s final decision in the case, only if certain conditions are met. First, pursuant to Rule 76(a)(1), either the Judge must certify that his or her interlocutory ruling involves a controlling question of law and that immediate review will materially advance the final disposition of the proceeding or the Judge must deny a party’s motion for certification of the interlocutory ruling to the Commission and the party must file with the Commission a petition for interlocutory review within 30 days of the Judge’s denial of such motion for certification. Second, under Rule 76(a)(2), a majority of the Commission members must conclude that the Judge’s interlocutory ruling involves a controlling question of law and that immediate review may materially advance the final disposition of the proceeding.

In this case Runyan failed to ask the Judge to certify his ruling for interlocutory review and of course, the Judge has not denied any such request. Thus, Runyan has not followed the necessary procedures to seek interlocutory review.¹

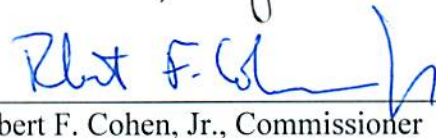
For the reasons set forth above, the petition filed by Runyan is denied.




Mary Lu Jordan, Chairman



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner



Patrick K. Nakamura, Commissioner



William I. Althen, Commissioner

¹ Even if Runyan had sought interlocutory review from the Judge and been denied, we would conclude that the conditions set forth in Rule 76(a)(2) would not be met. Therefore, it appears at this point that no purpose would be served by Runyan filing a motion for interlocutory review with the Judge.

Distribution:

**Jason M. Nutzman, Esq.
Dinsmore & Shohl, LLP
900 Lee Street, Suite 600
Charleston, WV 25301**

**Gonzales Law
Nathan Gonzales, Esq.
925 N. Hudson, Silver City, NM 88061**

**Ben Furth, Esq.
The Furth Law Firm, P.A.
The Furth Building
780 South Walnut #5
Las Cruces, NM 88001**

**Administrative Law Judge William B. Moran
Federal Mine Safety and Health Review Commission
1331 Pennsylvania Avenue, N. W., Suite 520N
Washington, D.C. 20004-1710**