

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1331 PENNSYLVANIA AVENUE, NW, SUITE 520N
WASHINGTON, D.C. 20004-1710

July 12, 2024

WESLEY MALLERY, :
 :
 :
 v. : Docket No. CENT 2024-0106
 :
 EL SEGUNDO COAL CO., LLC :
 :
 :

DIRECTION FOR REVIEW

The petition for discretionary review filed by the complainant, Wesley Mallery, on June 12, 2024, is granted with respect to the question of whether the Judge erred in finding no adverse action.

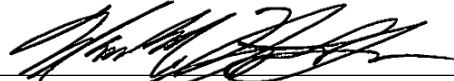
In addition, pursuant to Commission Procedural Rule 71, 29 C.F.R. § 2700.71, and section 113(d)(2)(B) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 823(d)(2)(B), we vote to grant *sua sponte* review of the Administrative Law Judge’s Orders to Show Cause, issued on March 5, 2024 and March 14, 2024, and subsequent dismissals to determine whether they are contrary to law.¹ Specifically, we review whether the Judge erred in issuing her Orders to Show Cause in the absence of any motion to dismiss or motion for summary decision submitted to the Judge.

The Commission will also determine whether the documents filed by Mr. Mallery on July 5, 2024 are part of the record on appeal.

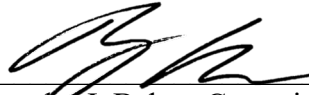
The parties shall file their briefs beginning 30 days from the date of this order in accordance with the briefing schedule requirements in 29 C.F.R. § 2700.75. Specifically, Mr. Mallery may file a single brief on or before August 12, 2024, to address the arguments in his petition for discretionary review, and the additional issue identified by the Commission in this direction for review. After the operator files its response brief, Mr. Mallery may file a reply brief within 20 days of service of the operator’s response brief.

¹ Commissioner Rajkovich would grant review of only the issues raised in the PDR.

Thereafter, Mr. Mallery may file documents only in accordance with the Commission's procedural rules and/or as permitted by the Commission. The Commission's procedural rules may be accessed at <https://www.fmshrc.gov>.



Marco M. Rajkovich, Jr., Commissioner



Timothy J. Baker, Commissioner



Moshe Z. Marvit, Commissioner

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