

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N
WASHINGTON, D.C. 20004-1710

July 23, 2024

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	
on behalf of ALVARO SALDIVAR	:	
	:	
v.	:	Docket No. WEST 2021-0178-DM
	:	
GRIMES ROCK, INC.	:	

BEFORE: Jordan, Chair; Althen, Rajkovich, Baker, and Marvit, Commissioners

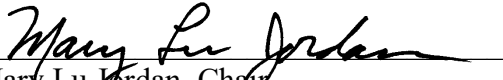
NOTICE

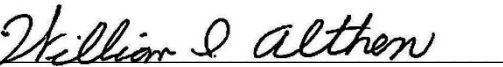
On November 28, 2023, the Commission issued a decision remanding this case to the Administrative Law Judge for further findings consistent with its decision. Before the Judge could issue his ruling, Grimes Rock, Inc. (“Grimes Rock”) appealed the Commission’s decision to the Ninth Circuit.¹ On May 23, 2024, the Court dismissed Grimes Rock’s appeal for lack of jurisdiction on the basis that a remand order to a judge is not a final agency decision. *Grimes Rock, Inc. v. FMSHRC*, No. 23-4418 (9th Cir. dismissed May 23, 2024), *citing Alaska v. EEOC*, 564 F.3d 1062, 1065 n.1 (9th Cir. 2009). The Court’s mandate returning jurisdiction to the Commission was issued on July 15, 2024.

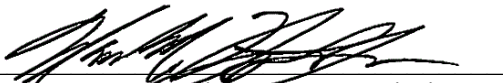
Commission Rule 69(b) states that: “Except to the extent otherwise provided herein, the jurisdiction of the Judge terminates when his decision has been issued.” 29 C.F.R. § 2700.69(b); *Vermont Unfading Green Slate Co.*, 23 FMSHRC 787 (Aug. 2001) (“The judge’s jurisdiction in this matter terminated when his decision was issued. . .”); *Peabody Coal Co.*, 2 FMSHRC 1035, 1037 (May 1980) (stating that in as much as the Judge’s decision “constitutes his final disposition of the proceedings” within section 113(d)(1) of the Mine Act, 30 U.S.C. § 823(d)(1), the Judge’s jurisdiction terminates on the date of issuance). In the instant matter, the Judge has yet to issue a decision pursuant to the Commission’s November 28 remand order. Therefore, the Judge’s jurisdiction here never terminated.

¹ “Any petition for federal court review of the *Decision* pursuant to section 106(a)(1) of the Mine Act, 30 U.S.C. § 816(a)(1), must generally await resolution of the remand to the judge, a further petition for discretionary review to the Commission, and disposition by the Commission of the petition.” *North Fork Coal Corp.*, 33 FMSHRC 589, 596 n.7 (Mar. 2011).

Accordingly, the Judge retains jurisdiction over this case and may proceed on remand as originally instructed and consistent with the Commission's November 28, 2023 decision.


Mary Lu Jordan, Chair


William I. Althen, Commissioner


Marco M. Rajkovich, Jr., Commissioner


Timothy J. Baker, Commissioner


Moshe Z. Marvit, Commissioner

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