

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

November 15, 2024

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
Petitioner

v.

CACTUS CANYON QUARRIES, INC.,
Respondent

CIVIL PENALTY PROCEEDING

Docket No. CENT 2024-0120
A.C. No. 41-00009-592668

Mine: Fairland Plant & Qys

BEFORE: Jordan, Chair; Baker and Marvit, 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. (2018) (“Mine Act” or “Act”). Cactus Canyon Quarries, Inc. (“Cactus Canyon”) filed with the Commission a “Petition for Discretionary Review of Claim Preclusion Misapplied to FRCP 12(b)(1) Defense of Lack of Subject Matter Jurisdiction.” The filing challenges an order issued by a Commission Administrative Law Judge denying the operator’s motion to dismiss for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted.

Although Cactus Canyon has styled its document as a petition for discretionary review, no hearing on the merits has taken place in this matter, and there has been no final decision of the Commission under section 113(d)(1) of the Act. 30 U.S.C. § 823(d)(1). We therefore construe the petition as a petition for interlocutory review under Commission Procedural Rule 76(a)(1), 29 C.F.R. § 2700.76(a)(1). *See, e.g., Cactus Canyon Quarries of Texas, Inc., 25 FMSHRC 528* (Sept. 2003) (construing a pleading styled as a petition for discretionary review as a petition for interlocutory review); *Southmountain Coal, Inc., 16 FMSHRC 28* (Jan. 1994) (same).

Under Commission Rule 76(a)(1), interlocutory review is a matter of sound discretion of the Commission. Review cannot be granted unless a “judge has certified, upon his own motion or the motion of a party, that his interlocutory ruling involves a controlling question of law and that in his opinion immediate review will materially advance the final disposition of the proceeding; or . . . the Judge has denied a party’s motion for certification of the interlocutory ruling to the Commission, and the party files with the Commission a petition for interlocutory review within 30 days of the Judge’s denial of such motion for certification.” 29 C.F.R. § 2700.76(a)(1).

Upon consideration of the filings of Cactus Canyon and the Secretary, and the issuances of the Judge, the Commission concludes that the procedural requirements in Commission Rule

76(a)(1) have not been met. *See* 29 C.F.R. § 2700.76(a)(1); *Appalachian Res. WVA, LLC*, 44 FMSHRC 721 (Dec. 2022) (denying petition for interlocutory review as premature); *Cty Line Stone Co.*, 44 FMSHRC 507, 508 (July 2022) (same).

Accordingly, Cactus Canyon's petition is denied.


Mary Lu Jordan, Chair


Timothy J. Baker, Commissioner


Moshe Z. Marvit, Commissioner

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