

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

April 3, 2007

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION, on behalf of :
LAWRENCE L. PENDLEY :
v. : Docket No. KENT 2006-506-D
HIGHLAND MINING CO., LLC :

BEFORE: Duffy, Chairman; Jordan and Young, Commissioners

ORDER

BY THE COMMISSION:

This discrimination proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2000) (“Mine Act”). On September 25, 2006, the Commission received a complaint of discrimination filed by the Secretary of Labor on behalf of Lawrence L. Pendley against Highland Mining Company, LLC (“Highland”) pursuant to section 105(c)(2) of the Mine Act, 30 U.S.C. § 815(c)(2). Among other relief requested, the complaint sought three days backpay with interest for Pendley. Compl. at 3. On December 21, 2006, the Secretary and Highland filed a Joint Motion to Approve Settlement. However, they stated in that motion that Pendley had indicated that “he will not agree to this settlement.” Jt. Mot. at 3. On January 18, 2007, Commission Administrative Law Judge David F. Barbour issued a Decision Approving Settlement and Dismissal of Proceeding. This decision adopted the major terms of the settlement described in the motion and dismissed the proceeding. Dec. at 1-2.

On February 15, 2007, the Commission received a letter from Pendley objecting to the judge’s settlement of his discrimination complaint and requesting relief from the decision. In his letter, Pendley stated that the amount of the settlement he received does not reflect the amount of time lost, and alleged that he did not agree to the settlement, nor was it discussed with him. Letter at 1.

We deemed Pendley's correspondence to be a timely-filed petition for discretionary review. *See, e.g., Wake Stone Corp.*, 27 FMSHRC 289, 290 (Mar. 2005). On February 26, 2007, we granted the petition and stayed briefing pending further order of the Commission.

On February 23, 2007 – prior to the Commission's granting of Pendley's petition – the Secretary filed a motion to reopen these proceedings, in which she stated that "Pendley, as a party to this case, should have been, but was not, given an opportunity to be heard prior to the proffered settlement being approved by the judge." S. Mot. at 3. The Secretary maintained that, because one of the parties did not participate in the settlement agreement, there was no "meeting of the minds" and therefore no genuine agreement between the parties. *Id.* Accordingly, the Secretary requested that the Commission set aside the judge's decision approving settlement and remand the case to the judge for further proceedings. *Id.* at 4-5.¹

On March 7, 2007, Highland filed a response to the Secretary's motion to reopen, urging the Commission to deny the motion and permit the Decision Approving Settlement to stand. Highland argued that there was a "meeting of the minds" between the representatives of the parties, Resp. at 3, and that the Secretary had stated in the settlement motion that the settlement achieved for Pendley all relief requested in the discrimination complaint. *Id.* at 1-2.

The Commission has made clear that "[s]ettlement of contested issues is an integral part of dispute resolution under the Mine Act." *Tarmann v. Int'l Salt Co.*, 12 FMSHRC 1, 2 (Jan. 1990) (quoting *Pontiki Coal Corp.*, 8 FMSHRC 668, 674 (May 1986)). In this respect, the Commission has observed that "the record must reflect and the Commission must be assured that a motion for settlement [approval], in fact, represents a genuine agreement between the parties, a true meeting of the minds as to its provisions." *Tarmann*, 12 FMSHRC at 2 (quoting *Peabody Coal Co.*, 8 FMSHRC 1265, 1266 (Sept. 1986)). *See also Wake Stone*, 27 FMSHRC at 290 (decision approving settlement vacated where it was "unclear whether the parties achieved a true meeting of the minds"). Moreover, according to the Commission's procedural rules, in a proceeding under section 105(c)(2) of the Mine Act, a "complainant on whose behalf the Secretary has filed the complaint is a party." Commission Procedural Rule 4(a), 29 C.F.R. § 2700.4(a).

¹ The Secretary relies on Rule 60(b)(4) of the Federal Rules of Civil Procedure, which permits a judicial body to relieve a party from a final judgment, order, or proceeding because the judgment is void. S. Mot. at 3-4. In the alternative, the Secretary requests that, if the Commission chooses to treat Pendley's letter as a timely-filed petition for discretionary review, it grant the same relief requested in her motion to reopen. *Id.* at 2 n.1. We have decided to adopt the latter approach and therefore need not reach the Secretary's Rule 60(b)(4) argument. Accordingly, the Secretary's motion is denied as moot.

Here, the record demonstrates that the motion was prematurely filed, as all of the parties had not come to an agreed disposition of this matter. *See Montana Resources, Inc.*, 15 FMSHRC 1527 (Aug. 1993). Accordingly, the judge's dismissal order is vacated, this case is reopened, and the matter is remanded to the judge for appropriate proceedings.² The Secretary's motion to reopen is denied as moot.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

² Neither the settlement agreement nor the judge's decision makes clear whether the amount to be awarded Pendley represents a net amount to be paid to him or whether deductions are to be taken out of that amount. J. Mot. at 2, Dec. at 1. This matter should be clarified on remand. *See Sec'y of Labor on behalf of Hopkins v. ASARCO, Inc.*, 18 FMSHRC 2081, 2082-83 (Dec. 1996). In addition, because interest is added to backpay awards in discrimination cases brought under the Mine Act, *see Ross and Gilbert v. Shamrock Coal Co., Inc.*, 15 FMSHRC 972, 976 (June 1993), and *Loc. U. 2274, UMWA v. Clinchfield Coal Co.*, 10 FMSHRC 1493, 1504-05 (Nov. 1988), the judge on remand should indicate the amount of interest, if any, included in any settlement.

Distribution

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