# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

**1730 K STREET NW, 6TH FLOOR**

**WASHINGTON, D.C. 20006**

September 4, 1998

| | | |
|---|---|---|
| SECRETARY OF LABOR, | : | |
| MINE SAFETY AND HEALTH | : | |
| ADMINISTRATION (MSHA), | : | |
| on behalf of ROSCOE RAY YOUNG | : | |
| | : | |
| v. | : | Docket No. KENT 98-254-D |
| | : | |
| LONE MOUNTAIN PROCESSING, INC. | : | |

BEFORE: Jordan, Chairman; Marks, Riley, Verheggen, and Beatty, Commissioners

DECISION

BY: Jordan, Chairman; Riley, Verheggen, and Beatty, Commissioners

In this discrimination proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 801 et seq. (1994) (AMine Act@ or AAct@), the Secretary of Labor timely filed a petition for review of Administrative Law Judge Gary Melick=s decision dismissing the application for temporary reinstatement she had filed on behalf of Roscoe Ray Young pursuant to Section 105(c)(2) of the Mine Act, 30 U.S.C. ' 815(c)(2), and Commission Procedural Rule 45(f), 29 C.F.R. ' 2700.45(f). *See* 20 FMSHRC 862 (Aug. 1998) (ALJ). Lone Mountain Processing, Inc. (ALone Mountain@), timely filed its response in opposition. Upon consideration of all of the submissions,[1] we grant the petition for review. For the reasons that follow, we affirm the judge=s decision.

I.

Factual and Procedural Background

On September 3, 1997, in anticipation of being laid off the next day (September 4) from his position as a roof bolter at Arch of Kentucky=s No. 37 mine, Roscoe Ray Young took a roof bolting test at Lone Mountain=s Huff Creek No. 1 mine as part of the employment application

[1] The Secretary moved for leave to file a reply to Lone Mountain=s brief in opposition, attaching her reply brief. Lone Mountain responded in opposition to the Secretary=s motion. By majority vote of the Commission the Secretary=s motion is granted, and her reply brief is accepted for consideration.

process. *Id*. at 862; Tr. 11-12. Later that month, he received a letter from Lone Mountain informing him that a job offer would not be forthcoming because he had failed to meet the requirement that he drill a minimum of 51.43 inches per minute during the test. Tr. 44-46; Gov=t Ex. 1. Young claims that he failed to meet the minimum requirement because he encountered unsafe conditions during the test, conditions he immediately brought to the attention of Gary Sisk, Lone Mountain=s Division Training Coordinator, who was administering the test. 20 FMSHRC at 862; Tr. 38-41, 50-51.

Young filed a discrimination complaint with MSHA on December 8, 1997, and on July 13, 1998, the Secretary filed a discrimination complaint on his behalf with the Commission in Docket No. KENT 98-255-D. 20 FMSHRC at 862-63; Tr. 16. Accompanying the complaint was the temporary reinstatement application, by which the Secretary seeks an order:

> directing [Lone Mountain] to immediately and on an expedited basis give Young a new roof bolting test under safe conditions and in the presence of an authorized representative of the Secretary, applying the same criteria for employment as [were] applicable on September 3, 1997 and, if successful, to immediately employ him as a roof bolter at the same rate of pay and with the same or equivalent duties assigned to him as from September 3, 1997.

Appl. for Temp. Reinst. at 3. Pursuant to Lone Mountain=s request in response to the complaint and application, a hearing was held before the judge on July 30, 1998.

Following the hearing, Lone Mountain moved to dismiss the application based in part on the ground that Young was not a Aminer@ under the Mine Act for purposes of temporary reinstatement. 20 FMSHRC at 863-64. The judge granted the motion, reasoning that, with respect to reinstatement, section 105(c)(2) refers only to a Aminer,@ and that the statutory definition of the term Aminer@ does not include an applicant for employment. *Id*. at 864. The judge was also persuaded by the absence of any reference in the temporary reinstatement provision to the term Aapplicant for employment,@ in comparison with its appearance eight other times in section 105(c)(1) and (2). *Id*. On review, the Secretary seeks reversal of the judge=s decision. S. Pet. at 15.

II.

Disposition

The Secretary urges reversal of the judge=s decision on the ground that the temporary reinstatement remedy in the Mine Act can be reasonably interpreted to apply to applicants for employment. *Id*. at 7-8. She contends that the term Aminer@ is used in connection with that remedy as a shorthand reference which includes applicants for employment. *Id*. at 8-10. She also argues that the legislative history of the statute in general, as well as the specific provisions

governing discrimination remedies, supports a construction of the statute extending the right to temporary reinstatement to applicants such as Young. *Id*. at 5-6, 10-12.

Lone Mountain submits that the judge=s decision should be affirmed based on the plain meaning of the language employed in the Mine Act regarding temporary reinstatement. L.M. Br. at 2-12. It also claims that the Commission is without jurisdiction to consider Young=s application because the complaint he filed with MSHA was untimely under the terms of the Mine Act. *Id*. at 12-13.

The first inquiry in statutory construction is Awhether Congress has directly spoken to the precise question at issue.@ *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984); *Thunder Basin Coal Co.*, 18 FMSHRC 582, 584 *(*Apr. 1996). If a statute is clear and unambiguous, effect must be given to its language. *See Chevron*, 467 U.S. at 842-43; *accord Local Union 1261, UMWA v. FMSHRC*, 917 F.2d 42, 44 (D.C. Cir. 1990). Deference to an agency=s interpretation of the statute may not be applied Ato alter the clearly expressed intent of Congress.@ *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (citations omitted). In ascertaining the plain meaning of the statute, courts utilize traditional tools of construction, including an examination of the Aparticular statutory language at issue, as well as the language and design of the statute as a whole,@ to determine whether Congress had an intention on the specific question at issue. *Id.*; *Local Union 1261, UMWA v. FMSHRC*, 917 F.2d at 44; *Coal Employment Project v. Dole*, 889 F.2d 1127, 1131 (D.C. Cir. 1989). The examination to determine whether there is such a clear Congressional intent is commonly referred to as a A*Chevron I*@ analysis. *See Coal Employment Project*, 889 F.2d at 1131; *Thunder Basin*, 18 FMSHRC at 584; *Keystone Coal Mining Corp.*, 16 FMSHRC 6, 13 (Jan. 1994).[2]

Section 105(c)(2) provides in pertinent part:

> Any miner or applicant for employment or representative of miners who believes that he has been discharged, interfered with, or otherwise discriminated against by any person in violation of this subsection may, within 60 days after such violation occurs, file a complaint with the Secretary alleging such discrimination. . . . [I]f

[2] If the statute is ambiguous or silent on a point in question, a second inquiry, commonly referred to as a A*Chevron II*@ analysis, is required to determine whether an agency=s interpretation of a statute is a reasonable one. *See Chevron*, 467 U.S. at 843-44; *Coal Employment Project*, 889 F.2d at 1131; *Thunder Basin Coal Co.*, 18 FMSHRC at 584 n.2; *Keystone*, 16 FMSHRC at 13.

> the Secretary finds that such complaint was not frivolously brought, the Commission, on an expedited basis upon application of the Secretary, shall order the immediate *reinstatement of the miner* pending final order on the complaint. If . . . the Secretary determines that the provisions of this subsection have been violated, he shall immediately file a complaint with the Commission, with service upon the alleged violator and the miner, applicant for employment, or representative of miners alleging such discrimination or interference and propose an order granting appropriate relief. The Commission shall afford an opportunity for a hearing . . . and thereafter shall issue an order, based upon findings of fact, affirming, modifying, or vacating the Secretary=s proposed order, or directing other appropriate relief. . . . The Commission shall have authority in such proceedings to require a person committing a violation of this subsection to take such affirmative action to abate the violation as the Commission deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner to his former position with back pay and interest. The complaining miner, applicant, or representative of miners may present additional evidence on his own behalf during any hearing held pursuant to [this] paragraph.

30 U.S.C. ' 815(c)(2) (emphasis added).

We agree with the judge that the plain meaning of section 105(c)(2) limits application of the temporary reinstatement remedy to a Aminer@ who has filed a discrimination complaint, and that, as an applicant for employment, Young was not a complaining Aminer@ for purposes of the Mine Act. Examining the term Aminer@ as it is used in section 105(c)(2), we look first to the definition of that term in the Mine Act. *See Peabody Coal Co.*, 18 FMSHRC 686, 690 (May 1996) (listing statutory definitions as first source of meaning for terms used in Mine Act). The definition of Aminer@ in section 3(g) of the Act does not include applicants for employment as miners, but instead limits the term to Aany individual *working* in a coal or other mine.@ 30 U.S.C. ' 802(g) (emphasis added). The Secretary has provided us with no explanation of how an applicant for employment can be considered to be a Aminer@ under that controlling definition.

Instead, the Secretary argues that the term Aminer@ is used with respect to the temporary reinstatement remedy as a shorthand reference to the pronouncement earlier in section 105(c)(2) that not just miners, but also applicants for employment and miners= representatives, may file discrimination complaints. S. Br. at 8-10. However, the language in section 105(c)(2) to which she directs us does not provide a clear indication that Congress was departing from the plain meaning of the term Aminer@ that is otherwise provided by statutory definition. This is necessary before we can even consider adopting the Secretary=s interpretation of section 105(c)(2). *See CPSC v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980) (AAbsent a clearly expressed legislative

intention to the contrary, [the statutory] language must ordinarily be regarded as conclusive.@). Accordingly, we decline to hold that the term Aminer@ is used as a shorthand reference in the temporary reinstatement provision to include applicants for employment.

Indeed, a careful reading of the statute contradicts the Secretary=s assertion that Aminer@ is a shorthand reference for Aminer or applicant for employment or representative of miners@ in the temporary reinstatement provision of section 105(c)(2). The temporary reinstatement clause is one of only two instances in which Aminer@ is used as a stand-alone term in section 105(c)(1) and (2).[3] In section 105(c)(1) and (2), Congress recited versions of the complete phrase Aminer, applicant for employment, or representative of miners@ eight times **C** in six instances before mentioning temporary reinstatement and two instances afterward. We find it highly unlikely that Congress would recite the complete phrase six consecutive times, then use a shorthand reference in referring to eligibility for the important and extraordinary statutory right of temporary reinstatement, only to immediately drop use of the shorthand reference and return to reciting the complete phrase (especially when establishing more mundane procedural formalities, such as service of the Secretary=s subsequent discrimination complaint). Moreover, in section 105(c)(3), Congress in fact used the term Acomplainant@ as a shorthand notation for those seeking relief under section 105(c). This indicates that where Congress wanted to use shorthand, it knew how to do so without resort to the term Aminer.@ Absent any other indication that Congress, in specifying the circumstances in which a complaining Aminer@ could be temporarily reinstated, intended to depart from the definition of that term it set forth in the Mine Act, we conclude that the temporary reinstatement remedy does not extend to applicants for employment.[4]

---

[3] The term Aminer@ is used once more in section 105(c)(2), in connection with the Aaffirmative action@ the Commission may order a person found to have violated section 105(c) to take to abate such a violation. *See* 30 U.S.C. ' 815(c)(2). However, Congress was careful to state that the referenced remedy **C** Athe rehiring or reinstatement of the miner to his former position with back pay and interest@ **C** is illustrative, and does not limit the range of remedies the Commission could order upon a finding of a section 105(c) violation. *Id*. Consequently, under section 105(c), the Commission has broad authority to remedy discrimination against applicants for employment as well as miners when the underlying merits of their cases have been considered and there have been findings of discrimination.

[4] Contrary to suggestions made by the Secretary (S. Pet. at 10-12), the legislative history of the Mine Act is silent regarding whether the remedy of temporary reinstatement extends to applicants for employment, and therefore provides no support for departing from the statute=s definition of Aminer.@ *See* S. Rep. No. 95-181 (1977), *reprinted in* Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong., *Legislative History of the Federal Mine Safety and Health Act of 1977* (1978) (A*Legis. Hist*.@). We also reject the contentions of the Secretary and our dissenting colleague that references in section 105(c)(2) and its legislative history to the Commission=s broad Amake-whole@ authority (*see* 30 U.S.C. ' 815(c)(2); S. Rep. No. 95-181, at 37, *Legis. Hist*. at 625) provide support for interpreting the temporary reinstatement remedy to extend to applicants. S. Br. at 12-13; slip op. at 10-11. The extraordinary remedy of temporary reinstatement is treated in the statute separately from the

Commission=s make-whole authority. It is also conditioned, not upon a finding of discrimination, but merely upon a showing that the miner=s discrimination complaint is not frivolous. *See* 30 U.S.C. ' 815(c)(2). The above-cited statutory language and legislative history, by contrast, relates to the Commission=s authority to remedy violations of section 105(c) once there has been a finding of discrimination. Any such finding can only be made, however, once Young=s complaint has been heard on the merits. Therefore, contrary to the assertion of our dissenting colleague (slip op. at 11), our decision that an applicant for employment, such as Young, is not entitled to temporary reinstatement under section 105(c)(2) should not be construed as Aclos[ing] the door@ on the applicant=s entitlement to full and complete relief designed to make him whole. It merely means that such relief is available when a final determination is made on the applicant=s claim of discrimination, rather than at this preliminary stage of the proceeding.

Consequently, we affirm the judge=s dismissal of Young=s temporary reinstatement application. We emphasize that our decision should in no way be construed as an indication of our view of the merits of Young=s discrimination complaint.[5] The Secretary and Young will have the same opportunity as individuals who have alleged discrimination in other cases to demonstrate before the judge whether discrimination violative of the Act has been perpetrated against Young. If they are successful in doing so, the Commission has authority to fashion an appropriate remedy to make Young whole at that time.[6]

[5] Indeed, because we dismiss Young=s application on a purely legal basis, our decision here is not even an indication of whether his discrimination complaint otherwise meets the statutory standard for temporary reinstatement of not having been frivolously brought.

[6] We decline to address the question of whether Young=s complaint to MSHA was timely under the terms of the Mine Act. *See* L.M. Br. at 13. That question is not properly before us in this temporary reinstatement proceeding in which the sole, dispositive issue is whether an applicant for employment can obtain the remedy of temporary reinstatement. The timeliness of Young=s complaint is an issue that only can be addressed in the *separate* proceeding arising from that complaint, which is before the judge in Docket No. KENT 98-255-D.

III.

Conclusion

For the foregoing reasons, we affirm the judge=s decision dismissing the temporary reinstatement application.

Mary Lu Jordan, Chairman

James C. Riley, Commissioner

Theodore F. Verheggen, Commissioner

Robert H. Beatty, Jr., Commissioner

Commissioner Marks, dissenting:

I would reverse the judge=s determination that the Commission lacks jurisdiction over the question of whether an applicant for employment of a mine may be temporarily reinstated as an applicant under Mine Act section 105(c)(2). That section provides in pertinent part:

> Any miner or applicant for employment or representative of miners who believes that he has been discharged, interfered with, or otherwise discriminated against by any person in violation of this subsection may. . . file *a complaint* with the Secretary alleging such discrimination. Upon receipt of *such complaint*, the Secretary shall forward a copy of the complaint to the respondent and shall cause such investigation to be made as he deems appropriate. Such investigation shall commence within 15 days . . . , and if the Secretary finds that *such complaint* was not frivolously brought, the Commission, on an expedited basis upon application of the Secretary, shall order the immediate reinstatement of the miner pending final order on the *complaint*. If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall immediately file a complaint with the Commission, with service upon the alleged violator and the miner, applicant for employment, or representative of miners alleging such discrimination or interference . . . . The Commission shall have authority in such proceedings to require a person committing a violation of this subsection to take such affirmative action to abate the violation as the Commission deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner to his former position with back pay and interest. The complaining miner, applicant, or representative of miners may present additional evidence on his own behalf during any hearing held pursuant to [this] paragraph.

30 U.S.C. ' 815(c)(2) (emphasis added).

When the Commission reviews the Secretary=s construction of the Mine Act, we are confronted with two questions. *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984). First is the question Awhether Congress has directly spoken to the precise question at issue.@ *Id*. If the intent of Congress is unambiguously clear, that is the end of the matter. *Id*. at 842-43. If, however, Congress has not directly addressed the precise question at issue, the Commission may not simply impose its own construction on the statute. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the Commission is whether the Secretary=s answer is based on a permissible construction of the statute. *Id.* at 843.

Adhering to this *Chevron* analysis, I conclude that Congress did not unambiguously manifest its intent that the remedy of temporary reinstatement applies exclusively to miners and not to applicants for employment. In fact, section 105(c)(2) would seem to suggest otherwise. The first sentence of that section enables Aany miner or applicant for employment or representative of miners@ to bring a complaint with the Secretary alleging discrimination. The second sentence provides that A[u]pon receipt of *such* complaint,@ the Secretary shall forward the complaint to the respondent and commence an investigation. 30 U.S.C. ' 815(c)(2) (emphasis added). The third and key sentence states:

> Such investigation shall commence within 15 days of the Secretary=s receipt of the complaint, and if the Secretary finds that *such* complaint was not frivolously brought, the Commission, on an expedited basis upon application of the Secretary, shall order immediate reinstatement of the miner pending final order on the complaint.

*Id*. (emphasis added). By using the word Asuch@ to refer back to the complaint of any Aminer or applicant for employment or representative of miners,@ section 105(c)(2) suggests that the complaint of a miner applicant, if not frivolously brought, could be subject to an immediate temporary reinstatement order.

Having found that Congress was, at the least, ambiguous on this issue, I turn to the second question under *Chevron*: whether the Secretary=s interpretation is reasonable. Deference is accorded to Aan agency=s interpretation of the statute it is charged with administering when that interpretation is reasonable.@ *Energy West Mining Co. v. FMSHRC*, 40 F.3d 457, 460 (D.C. Cir. 1994) (citing *Chevron*, 467 U.S. at 844). The agency=s interpretation of the statute is entitled to affirmance as long as that interpretation is one of the permissible interpretations the agency could have selected. *Chevron*, 467 U.S. at 843; *Joy Techns., Inc. v. Secretary of Labor*, 99 F.3d 991, 995 (10th Cir. 1996), *cert. denied*, 117 S. Ct. 1691 (1997).

The Secretary argues that the use of the term Aminer@ in the third sentence of section 105(c)(2) is a shorthand way of referring back to the three terms Aminer,@ Aapplicant for employment,@ and Arepresentative of miners.@ S. Pet. at 8-9 & n.1. Additionally, the Secretary argues that the term Areinstatement@ in section 105(c)(2) encompasses reinstatement of an applicant for employment to the situation he was in before any discrimination occurred. *Id.* at 10. In support of her position, the Secretary relies on the definitions of Areinstate@ that define the term to mean Ato restore to a state or position from which the object or person had been removed,@ and Ato replace in an original or equivalent state.@ *Id.* (citing Black=s Law Dictionary 1287 (6th ed. 1990); Webster=s Third New International Dictionary 1915 (1993)). The Secretary asserts that her interpretation is consistent with the legislative history and statutory purpose of section 105(c). *Id.* at 4-14.

I believe that the Secretary=s interpretation is a reasonable and permissible construction of section 105(c). The legislative history on this issue is very clear that section 105(c) is to be Aconstrued expansively@ and that the full range of its remedies apply to miner applicants. S. Rep. No. 95-181, at 35-37 (1977), *reprinted in* Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong., *Legislative History of the Federal Mine Safety and Health Act of 1977*, at 623-25 (1978) (A*Legis. Hist.*@). The report of the Senate Committee on Human Resources, the committee responsible for drafting the Mine Act (ASenate Committee@) stated:

> Section [105(c)] of the bill prohibits any discrimination against a miner for exercising any right under the Act. It should also be noted that the class protected is expanded from the current [Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. ' 801 et seq. (1976) (ACoal Act@)]. The prohibition against discrimination applies to miners, applicants for employment, and the miners= representatives. The Committee intends that the scope of protected activities be broadly interpreted by the Secretary . . . .
>
> . . . .
>
> . . . . The wording of section [105(c)] is broader than the counterpart language in section 110 of the Coal Act and the Committee intends section [105(c)] to be construed expansively to assure that miners will not be inhibited in any way in exercising any rights afforded by the legislation. This section is intended to give miners, their representatives, and applicants, the right to refuse to work in conditions they believe to be unsafe or unhealthful and to refuse to comply if their employers order them to violate a safety and health standard promulgated under the law.

S. Rep. No. 95-181, at 35-36, *Legis. Hist*. at 623-24.

Thus, Congress contemplated that applicants for employment could seek relief under the discrimination provisions of the Mine Act if they were exposed to unsafe work conditions as part of the application process. This is exactly what has been alleged to have happened here. The Secretary has alleged that applicant Roscoe Ray Young encountered unsafe roof conditions when he took a test to be a roof bolter for Lone Mountain, that he complained to the operator=s agent of the unsafe conditions, that given the unsafe conditions he had to work slowly and was unable to complete the test in the time allotted by the operator, and, as a result, was not offered the roof bolting job. 20 FMSHRC at 862.

Pursuant to Congressional mandate that the Secretary Arigorously enforce@ discrimination rights (S. Rep. No. 95-181, at 36, *Legis. Hist*. at 624), the Secretary has initiated this application for temporary reinstatement of Young to his status of applicant, seeking to give Young a new test

under safe conditions. Again, Congress has authorized this type of broad relief. The report of the Senate Committee provides:

> It is the Committee=s intention that the Secretary propose, and that the Commission require, *all relief* that is necessary to make the complaining party whole and to remove the deleterious effects of the discriminatory conduct including, but not limited to reinstatement with full seniority rights, back-pay with interest, and recompense for any special damages sustained as a result of the discrimination. *The specified relief is only illustrative*.

S. Rep. No. 95-181, at 37, *Legis. Hist.* at 625 (emphasis added). With this broad enforcement mandate, the Secretary has very reasonably interpreted the temporary reinstatement remedy provided in section 105(c)(2) to apply to complaints of applicants for employment. It is the Commission now, who by narrowly interpreting section 105(c)(2), is failing to adhere to Congressional mandate to require Aall relief that is necessary to make the complaining party whole and to remove the deleterious effects of the discriminatory conduct.@ S. Rep. No. 95-181, at 37, *Legis. Hist*. at 625.

In addition, Congress made clear that this Commission was to construe the discrimination provisions under the Mine Act liberally, in a way so as to further the safety goals of the Act. The report of the Senate Committee expressly approved the judicial interpretations of the Coal Act discrimination provision that were contained in *Munsey v. Morton*, 507 F.2d 1202 (D.C. Cir. 1974) and *Phillips v. Interior Board Of Mine Operations Appeals*, 500 F.2d 772 (D.C. Cir. 1974). S. Rep. No. 95-181, at 36, *Legis. Hist.* at 624. Both of those cases emphasized that the discrimination provisions contained in the Coal Act, the predecessor to the Mine Act, were of a remedial nature and as a consequence were to be liberally construed to enable achievement of legislative objectives. *Munsey*, 507 F.2d at 1210-11; *Phillips*, 500 F.2d at 781-83. Construing section 105(c)(2) liberally, as we are required to do by its remedial nature, leads to one inescapable conclusion: that this Commission has jurisdiction over the Secretary=s proposed application for temporary reinstatement in this case.

Finally, the Senate Committee was also Aaware that mining often takes place in remote sections of the country, and in places where work in the mines offers the only real employment opportunity.@ S. Rep. No. 95-181, at 35, *Legis. Hist*. at 623. For this reason, it is essential that applicants for mining positions be protected from any unsafe working conditions and be able to bring cases for immediate relief should discrimination occur. Unfortunately, the Commission, by its decision today, has closed the door on an important remedy that could have protected applicants from unsafe conditions or discriminatory behavior.

For these reasons, I cannot join the majority and I dissent. I would remand to the judge to determine whether the Secretary=s complaint has been frivolously brought pursuant to Mine Act

section 105(c)(2) and to address Lone Mountain=s assertion that applicant Young=s complaint was not timely.

Marc Lincoln Marks, Commissioner

Distribution

Jerald S. Feingold, Esq.
Office of the Solicitor
U.S. Department of Labor
4015 Wilson Blvd., Suite 400
Arlington, VA 22203

Marco Rajkovich, Jr., Esq.
Wyatt, Tarrant & Combs
Lexington Financial Center, Suite 1700
250 West Main Street
Lexington, KY 40507

Administrative Law Judge Gary Melick
Federal Mine Safety & Health Review Commission
Office of Administrative Law Judges
5203 Leesburg Pike, Suite 1000
Falls Church, VA 22041