

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET N.W., 6TH FLOOR

WASHINGTON, D.C. 20006

August 8, 1995

LANCE PAUL

v.

NEWMONT GOLD COMPANY

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Docket No. WEST 95-228-DM

BEFORE: Jordan, Chairman; Doyle, Holen and Marks, 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. (1988) (AMine Act@ or AAct@). On February 13, 1995, Lance Paul initiated an action pursuant to section 105(c)(3) of the Mine Act, 30 U.S.C. ' 815(c)(3), alleging that he had been discriminated against by Newmont Gold Company (ANewmont@) in violation of the Act. On May 23, 1995, Administrative Law Judge Jerold Feldman issued an order setting the matter for hearing. On June 27, Newmont filed a motion to dismiss on the basis that it was unable to locate Paul. On June 29, the judge issued an order granting the motion and dismissing the case.

On July 28, 1995, the Commission received a letter addressed to Judge Feldman from Paul, requesting that his complaint be reopened. Paul states that he had informed MSHA of his new address in January, and that he had arranged with the Postal Service to have his mail forwarded for one year. He states that, although he had received the order of dismissal, he had not received the notice of hearing.

The judge's jurisdiction in this matter terminated when his decision was issued on June 29, 1995. 29 C.F.R. ' 2700.69(b). Under the Mine Act and the Commission's procedural rules, relief from a judge's decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. ' 823(d)(2); 29 C.F.R. ' 2700.70(a). We deem Paul's letter to be a timely filed petition for discretionary review, which we grant. *See, e.g., Middle States Resources, Inc.*, 10 FMSHRC 1130 (September 1988).

On the basis of the present record, we are unable to evaluate the merits of Paul's position.

In the interest of justice, we remand this matter to the judge, who shall determine whether dismissal is warranted. *See Hickory Coal Co.*, 12 FMSHRC 1201, 1202 (June 1990).

For the reasons set forth above, we vacate the judge's dismissal order and remand this matter for further proceedings.

Mary Lu Jordan, Chairman

Joyce A. Doyle, Commissioner

Arlene Holen, Commissioner

Marc Lincoln Marks, Commissioner