

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW
SUITE 9500
WASHINGTON, DC 20001

January 5, 2007

UNITED MINE WORKERS OF	:	
AMERICA, LOCAL 1248	:	
	:	Docket No. PENN 2002-23-C
v.	:	
	:	
MAPLE CREEK MINING, INC.	:	

ORDER

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2000) (“Mine Act” or “Act”). Pursuant to section 111 of the Mine Act, 30 U.S.C. § 821, the United Mine Workers of America, Local 1248 (“the UMWA”) seeks compensation for miners idled by a July 31, 2001, order issued by the Secretary of Labor’s Mine Safety and Health Administration (“MSHA”) requiring the withdrawal of miners from a mine of Maple Creek Mining, Inc. (“Maple Creek”). On May 4, 2006, Administrative Law Judge Michael Zielinski denied Maple Creek’s motion for summary decision on the claim for compensation. 28 FMSHRC 407 (May 2006) (ALJ). Upon Maple Creek’s motion for reconsideration, the judge invited the Secretary of Labor to appear as amicus curiae and file a brief on the reconsideration motion, which she did. 28 FMSHRC 904 (Oct. 2006) (ALJ). The judge subsequently denied the motion. *Id.*

Pursuant to Commission Procedural Rule 76, 29 C.F.R. § 2700.76, Maple Creek thereafter moved for certification of the judge’s rulings for interlocutory review, and the UMWA filed a response in opposition. On December 14, 2006, the judge granted Maple Creek’s motion, certifying for review the question of whether the MSHA withdrawal order became final for purposes of section 111 of the Act. Applying Rule 76(a)(1)(i), the judge found that his prior rulings on summary decision involved a controlling question of law and that immediate review by the Commission may materially advance the final disposition of the case.

Commission Rule 76(a) provides that interlocutory review is a matter of sound discretion of the Commission and that the Commission may grant interlocutory review upon a determination that the judge’s interlocutory ruling involves a controlling question of law and immediate review will materially advance the final disposition of the proceeding. 29 C.F.R. § 2700.76(a). Upon consideration of the judge’s certification, we hereby grant review of the

judge's decisions on motion for summary decision and the issue of whether the MSHA withdrawal order became final for purposes of section 111 of the Act. We also grant, sua sponte, amicus curiae status to the Secretary of Labor.

Maple Creek and the UMWA are hereby ordered to file initial briefs 20 days from the date of this order. Response briefs by both parties, as well as the Secretary's amicus brief if she chooses to file one, will be due 10 days following service of the last initial brief.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

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