

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW  
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WASHINGTON, DC 20001

September 10, 2004

SECRETARY OF LABOR	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket Nos. SE 2003-160
v.	:	SE 2003-161
	:	
JIM WALTER RESOURCES, INC.	:	

BEFORE: Duffy, Chairman; Jordan, Suboleski, and Young, 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. (2000). On August 26, 2004, pursuant to Commission Rule 76, 29 C.F.R. § 2700.76, Jim Walter Resources, Inc. (“JWR”) filed with the Commission a petition for interlocutory review of an order issued by Administrative Law Judge David F. Barbour denying JWR’s motion for summary decision. 26 FMSHRC 623 (July 2004) (ALJ). Judge Barbour had also denied JWR’s motion for reconsideration of his decision, and its request, in the alternative, that he certify his earlier ruling to the Commission for interlocutory review. 26 FMSHRC 734 (Aug. 2004) (ALJ). On August 30, 2004, the Secretary of Labor filed an opposition to JWR’s petition for interlocutory review, and JWR subsequently filed a reply to the Secretary’s opposition.

Upon consideration of the pleadings filed by JWR and the Secretary, we have determined that JWR has failed to establish both that the order denying its motion for summary decision involves a controlling question of law and that immediate review may materially advance the final disposition of the proceeding. *See* 29 C.F.R. § 2700.76(a)(2). We therefore deny the petition.

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Michael F. Duffy, Chairman

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Mary Lu Jordan, Commissioner

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Stanley C. Suboleski, Commissioner

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Michael G. Young, Commissioner

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