

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW  
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WASHINGTON, DC 20001

October 10, 2006

SECRETARY OF LABOR	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket Nos. SE 2005-301-M
v.	:	SE 2006-131-M
	:	SE 2006-167-M
HOSEA O. WEAVER & SONS, INC.	:	

BEFORE: Duffy, Chairman; Jordan 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 September 15, 2006, pursuant to Commission Procedural Rule 76, 29 C.F.R. § 2700.76, Hosea O. Weaver & Sons, Inc. (“Weaver”) filed with the Commission a petition for interlocutory review of an order issued by Administrative Law Judge David F. Barbour granting the Secretary of Labor’s motion for summary decision and denying Weaver’s motion for summary decision. 28 FMSHRC 688, 692 (July 2006) (ALJ). Judge Barbour also denied Weaver’s motion to certify this ruling to the Commission for interlocutory review. 28 FMSHRC 751, 752 (Aug. 2006) (ALJ).<sup>1</sup> On September 25, 2006, the Secretary filed an opposition to Weaver’s petition for interlocutory review.

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<sup>1</sup> On August 29, 2006, the Commission granted the Secretary’s motion to dismiss Weaver’s Petition for Discretionary Review, or in the Alternative, Petition for Interlocutory Review, which Weaver filed concurrently with its motion to certify the judge’s ruling, on the grounds that it was prematurely filed. 28 FMSHRC 542, 543 (Aug. 2006).

Upon consideration of the pleadings filed by Weaver and the Secretary, we have determined that Weaver has failed to establish 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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Michael G. Young, Commissioner

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