

FILED

NOT FOR PUBLICATION

JAN 07 2011

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

VURNUN EDWURD JAXUN,

Petitioner,

v.

FEDERAL MINE SAFETY AND
HEALTH REVIEW COMMISSION;
ASARCO, LLC,

Respondents.

No. 09-72459

FMSHRC No. WEST 2007-811-
DM

MEMORANDUM*

On Petition for Review of an Order of the
Federal Mine Safety and Health Review Commission

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and THOMAS, Circuit Judges.

Vurnun Edwurd Jaxun petitions pro se for review of the Federal Mine Safety and Health Review Commission's decision dismissing his discrimination complaint under section 105(c) of the Federal Mine Safety and Health Act of 1977.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

We have jurisdiction under 30 U.S.C. § 816(a). We review for substantial evidence the Administrative Law Judge's factual findings, *Miller Mining Co. v. Fed. Mine Safety & Health Review Comm'n*, 713 F.2d 487, 490 (9th Cir. 1983), and we deny the petition for review.

Substantial evidence supports the Administrative Law Judge's finding that ASARCO, LLC terminated Jaxun because of his insubordinate behavior and not because of his safety complaints. Accordingly, Jaxun's discrimination complaint was properly dismissed. *See* 30 U.S.C. § 815(c)(1).

We do not consider Jaxun's contentions concerning "fraudulent inducement of employment" and "interference with the exercising of the statutory rights of a miner" because these claims were not raised below. *See Travelers Prop. Cas. Co. of Am. v. ConocoPhillips Co.*, 546 F.3d 1142, 1146 (9th Cir. 2008).

PETITION FOR REVIEW DENIED.