

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
2 SKYLINE, 10th FLOOR  
5203 LEESBURG PIKE  
FALLS CHURCH, VIRGINIA 22041

January 6, 1997

SAMUEL J. McLAUGHLIN, employed	:	EQUAL ACCESS TO JUSTICE
By CONSOLIDATION COAL COMPANY	:	PROCEEDING
Applicant	:	
	:	Docket No. EAJ 96-5
v.	:	
	:	Formerly WEVA 94-366
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
by CONSOLIDATION COAL	:	
COMPANY,	:	
Respondent	:	
	:	

ORDER OF DISMISSAL

Before: Judge Barbour

The Applicant, Samuel J. McLaughlin, through counsel has stated that he wishes to withdraw his application. In a response, Counsel for the Secretary recognizes the discretion of the administrative law judge to rule on McLaughlin's request. However, counsel suggests that any withdrawal be with prejudice, since McLaughlin was given full opportunity to present his . . . claims and future reconsideration of these matters could unnecessarily expend judicial time and present an undue burden@ (letter, December 20, 1996).

Commission Rule 11 provides that a party may withdraw a pleading at any stage of a proceeding with the approval of the judge (29 C.F.R. ' 2700.11). There is no reason apparent why McLaughlin should not be permitted to withdraw.

Also, there is no reason apparent why the withdrawal should not be with prejudice. I agree with counsel that McLaughlin has had ample opportunity to establish his claims and that future reconsideration of the matter would be unwarranted and intrusive.

Accordingly, McLaughlin's application is **WITHDRAWN** and this proceeding is **DISMISSED WITH PREJUDICE**.

David F. Barbour  
Administrative Law Judge



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