

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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FALLS CHURCH, VIRGINIA 22041

March 19, 1999

JAMES M. RAY Employed by	:	EQUAL ACCESS TO JUSTICE
LEO JOURNAGAN CONSTRUCTION	:	PROCEEDING
COMPANY, INC.,	:	
Applicant	:	Docket No. EAJ 96-4
v.	:	
	:	Journagan Portable
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	
Respondent	:	

DECISION APPROVING SETTLEMENT

Before: Judge Weisberger

Introduction

This proceeding involves the recovery of attorneys' fees and expenses under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (1996). James M. Ray (Ray), who was employed by Leo Journagan Construction Company, Inc. (Journagan), prevailed over the Mine Safety and Health Administration (MSHA) in the underlying section 110(c) proceeding under the Federal Safety and Health Act of 1977 (Act), 30 U.S.C. § 820(c) (1994). 18 FMSHRC 892 (June 1996). Thereafter, Ray filed an application for fees and expenses under the EAJA on the basis that the Secretary's position on the two citations at issue was not substantially justified. Former Administrative Law Judge William Fauver denied the application. 18 FMSHRC 2033 (Nov. 1996) (ALJ). Ray filed a petition for review with the Commission challenging the Judge's determination that the Secretary's position was substantially justified. The Commission reversed Judge Fauver's determination of substantial justification on the first citation,¹ but affirmed as to the second. (20 FMSHRC 1014 (1998)).

The Commission remanded this proceeding . . . in order to allocate from the total amount of fees and expenses originally applied for those attributable to Ray's defense of section 110(c) liability arising from the first citation. (20 FMSHRC supra at 1029.)

The parties filed a Motion to Approve Settlement of the issues raised in this case. I have reviewed the motion and representations of the parties along with the record in this case. I find that the settlement is proper under the terms of the EAJA, and I approve It.

ORDER

¹/ This Citation alleges a violation of 30 C.R.R. § 56.12016

It is **ORDERED** that the motion is **GRANTED**. It is further **ORDERED** that the Secretary shall pay James M. Ray \$27,000 within 40 days of this Decision.

Avram Weisberger
Administrative Law Judge

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