

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

July 23, 1999

BRIAN K. MOORE	:	DISCRIMINATION PROCEEDING
Complainant	:	
v.	:	Docket No. KENT 99-2-D
	:	
CHELLE ENERGY, INC., and	:	PIKE CD 98-09
CLYDE BOYD,	:	
Respondent	:	
	:	Mine No. 1
	:	Mine ID 15-17881

ORDER OF DISMISSAL

Appearances: Regina Triplett, Esq., Chris Ratliff Law Offices, Pikeville, Kentucky, for Respondent Chelle Energy, Incorporated;
Thomas M. Smith, Esq., Prestonsburg, Kentucky, for Respondent Clyde Boyd.

Before: Judge Weisberger

This case is before me based on a Complaint filed by Brian K. Moore alleging that Chelle Energy, Inc., and Clyde Boyd unlawfully discriminated against him in violation of Section 105(c) of the Federal Mine Safety and Health Act of 1977. On February 1, 1999, an order was issued scheduling this matter for hearing on April 13-15, 1999. Moore subsequently retained counsel, and the hearing was rescheduled, at the request of counsel, for May 12-13, 1999.¹ Respondents subsequently moved to continue the hearing, and after the presentation of arguments by all Parties in a telephone conference call on April 28, 1999, the motion was granted. On April 30, 1999, an order was issued rescheduling the hearing for July 7-8, 1999, to commence at 9:00 a.m. in Louisa, Kentucky.

On July 7, 1999, counsel for Respondents were assembled at 9:00 a.m., at the designated site. Moore did not appear, nor did he contact my office or the courthouse where the case was scheduled to be heard. I contacted my office at 9:10 a.m., and spoke with one of the Commission's secretaries who informed me that at 4:30 p.m., July 6, she received a telephone call from a person who identified himself as Brian K. Moore, who told her that he was having problems with his job, that he was not being allowed to take off to attend the hearing, and that he wanted the hearing continued. The secretary said she advised him that I was in transit. She also

¹/ Moore's counsel subsequently filed a Motion to Withdraw as counsel, and the motion was granted in an order issued April 21, 1999.

furnished him with the address of the courthouse in Louisa, Kentucky, and the phone number of the court clerk. The secretary said she advised Moore to go to the hearing. The secretary told me that Moore said that he had no way of getting there. The secretary told me that she informed him to make sure that he shows up at the hearing.

At the hearing, Respondents made a Motion to Dismiss based on Moore's failure to appear at the hearing.

29 C.F.R. § 2700.66(l) provides as follows: "If a party fails to attend a scheduled hearing, the Judge, where appropriate, may find the party in default or dismiss the proceeding without issuing an order to show cause." The order setting this case for hearing was issued on April 30, 1999. Thus, Moore was afforded sufficient time to arrange his affairs so he could attend the hearing. Should this matter be continued, there is no certainty that Moore would be able to arrange transportation and appear at a hearing. Moore had to make the choice between working or attending the hearing and pursuing his case, and chose to work. Further, as a result of his not contacting the Commission until 4:30 p.m., the day prior to the hearing, the Commission incurred the needless expenses of transportation and per diem of the undersigned, as well as costs of a reporter. Also, Respondents incurred loss of time in appearing at the hearing.

Therefore, for all the above reasons, and pursuant to section 2700.66(l), supra, the Motion to Dismiss is granted.

ORDER

It is **ORDERED** that this case be **DISMISSED**.

Avram Weisberger
Administrative Law Judge

Distribution:

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