

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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FALLS CHURCH, VIRGINIA 22041

October 5, 2000

WILLIAM C. GREEN,	:	DISCRIMINATION PROCEEDING
Complainant	:	
	:	Docket No. VA 2000-16-D
v.	:	NORT CD 2000-1
	:	
COASTAL COAL COMPANY, LLC,	:	Guess Mountain Mine #2
Respondent	:	Mine ID 44-06807

ORDER

Respondent, filed a Motion to Dismiss Discrimination Complaint on August 28, 2000, on the grounds that “Complainant’s discharge does not violate § 105(c) of the Federal Mine Safety and Health of 1977 (“Mine Act”), and his complaint fails to state a claim upon which relief may be granted under the Mine Act.” Specifically, Respondent asserted that Complainant fails to allege protected activity under the Act. By Order to Respond of September 8, 2000, Complainant was directed to respond to Respondent’s motion by specifying in detail the reason he believes he was discharged. Complainant timely responded on September 20, 2000. Respondent replied on October 2, 2000, acknowledging that Complainant had, indeed, alleged protected activity, but renewing its motion to dismiss on the grounds that Complainant failed to file a Prehearing Report, as directed by Order to Show Cause of August 5, 2000, and that he cannot establish a *prima facie* case of discrimination.

Pro se litigants are afforded a great deal of latitude in bringing claims before the Commission and under Commission Procedural Rule 42, 29 C.F.R. § 2700.42, are held to setting forth a short and plain statement of the facts constituting the alleged discrimination and a statement of the relief requested. *Ribble v. T & M Development Company*, 22 FMSHRC 593 (May 2000). The Commission continues to caution that they should not be required to begin proving a *prima facie* case at the stage where they are simply held to meeting the Commission’s minimal pleading requirements. *Id.* at 595 (quoting *Perry v. Phelps Dodge Morenci, Inc.*, 18 FMSHRC 1918, 1921 (November 1996).

In this case, Complainant has met the Commission’s pleading requirements and, in accordance with Rule 12(b)(6) of the Federal Rules of Civil Procedure, his complaint is construed in the light most favorable to him and his allegations are assumed to be true. Therefore, he must be afforded the opportunity to prove his allegations at hearing.

Accordingly, Respondent's Motion to Dismiss Discrimination Complaint, on both grounds, is hereby **DENIED**, and the hearing set in this matter shall proceed, as scheduled.

Jacqueline R. Bulluck
Administrative Law Judge
(703) 756-6210

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