

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
601 NEW JERSEY AVENUE, N.W., SUITE 9500
WASHINGTON, D.C. 20001

August 3, 2007

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 2006-29
Petitioner	:	A.C. No. 46-08909-70032 A
	:	
v.	:	
	:	
KENNETH D. BOWLES, employed by	:	Mine No. 1
NEW RIVER MINING COMPANY,	:	
Respondent	:	

ORDER DENYING MOTION FOR SUMMARY DECISION

On July 27, 2007, counsel for the Secretary filed a motion for summary decision. The Secretary asserts, based on facts she deems not to be in dispute, she is entitled to summary decision as a matter of law. She requests Order No. 7227134 be affirmed and a finding be entered that the Respondent, Kenneth Bowles, knowingly violated 30 C.F.R. §75.220(a)(1) as alleged in the order. The Secretary further requests Mr. Bowles be assessed a civil penalty of \$1,500.00 for the violation.

The Secretary’s motion is carefully drafted. It is persuasive on its face. However, it is defective in one critical regard, and even though Mr. Bowles has not yet filed a response, the motion cannot be granted. The Commission’s rule on summary decisions states in part, “At any time after commencement of a proceeding and no later than 25 days before the date fixed for the hearing on the merits, a party may move the Judge to render summary decision disposing of all or part of the proceeding.” 29 C.F.R. §2700.67(a). On March 30, 2007, an amended notice was issued scheduling this case for hearing on August 14, 2007. Because the motion for summary decision was filed “later than 25 days before the date fixed for the hearing,” it cannot be granted.

Mr. Bowles should find little comfort in this denial. Critical components of the motion are based on facts established by Mr. Bowles’s failure to respond to requests for admissions. Mr. Bowles is advised that under applicable Federal Rules of Civil Procedure, “A matter is admitted unless, within 30 days after service of the request or within such shorter or longer time as the court may allow or as the parties may agree to in writing... the party to whom the request is directed serves upon the party requesting an admission a written answer or objection addressed to the matter.” Fed. R. Civ. P. 36(a). Moreover, “[A]ny matter admitted under [the] rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission.” Fed. R. Civ. P. 36(b).

Accordingly, the parties are advised the hearing on this matter will go forward as scheduled. Unless good cause is shown by Mr. Bowles, matters deemed admitted will be considered conclusively established.

David F. Barbour
Administrative Law Judge
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/rao