

CCASE:  
KENNETH WIGGINS V. EASTERN ASSOC. COAL  
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION  
WASHINGTON, DC  
October 6, 1983

KENNETH A. WIGGINS

v. Docket No. WEVA 82-300-D

EASTERN ASSOCIATED COAL CORP.

ORDER

This discrimination case arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1976 & Supp. V 1981). On September 6, 1983, the administrative law judge issued a "Decision on the Merits" in which he held that Eastern Associated Coal Corp. had discharged Kenneth A. Wiggins in violation of section 105(c) of the Mine Act. 30 U.S.C. 815(c). The judge did not, however, award the miner relief. Instead, "Pending a Final Order" in this case, the judge allowed the miner 15 days from the date of his decision on the merits to submit a proposed order granting relief. The judge further allowed the operator 15 days from receipt of the miner's proposed order in which to reply. On October 3, 1983, Eastern Associated filed a petition for review of the judge's September 6, 1983 decision on the merits. 1/

Section 113(d)(1) of the Mine Act (30 U.S.C. 823(d)(1)) and Commission Rule 65(a) (29 C.F.R. 2700.65(a)) require that the decision of the judge contain an order that finally disposes of the proceedings. Because the judge has not as yet issued an order granting the miner appropriate relief he has not finally disposed of the case. Thus, the issuance of his decision on the merits did not initiate the running of the statutory review period. Jurisdiction in the case remains with the judge. *Campbell v. The Anaconda Co.*, 3 FMSHRC 2763 (December 1981); *McCoy v. Crescent Coal Co.*, 3 FMSHRC 2475 (November 1981).

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1/ The petition was styled, "Respondent's Petition for Interlocutory

Review or in the Alternative for Discretionary Review." We read the petition as one for discretionary review. To the extent that it is intended as a petition for interlocutory review, it is denied.

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Accordingly, the petition for review is dismissed as premature. The parties may file petitions for discretionary review in accordance with section 113 of the Mine Act and Commission Rule 70 (29 C.F.R. 2700.70) once the judge has issued an order finally disposing of this proceeding.

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