

CCASE:
RANDALL PATSY V. BIG "B" MINING
DDATE:
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TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

RANDALL PATSY,	:	
Complainant	:	
	:	DISCRIMINATION PROCEEDING
	:	
v.	:	DOCKET NO. PENN 94-132-D
	:	
	:	
BIG "B" MINING COMPANY,	:	
Respondent	:	

ORDER

This discrimination proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. ("Mine Act"). Following receipt of Complainant Randall Patsy's response to a prehearing notice, Administrative Law Judge Jerold Feldman, on April 14, 1994, had issued an Order to Show Cause and Notice of Hearing, in which the judge requested that the complainant unequivocally state whether he wished to pursue his complaint. In a response dated April 18, 1994, and received by the judge on May 4, Mr. Patsy stated that he felt that he would be better off "to pursue this as a civil suit locally." Based on this response, on May 13, 1994, the judge dismissed the complaint. For the reasons that follow, we vacate the Order of Dismissal and remand for further proceedings.

On June 6, 1994, the Commission received a letter from Mr. Patsy in which he stated that he "would like a reversal of the dismissal." Mr. Patsy stated further that he had written previously and inquired as to how he could appeal the dismissal of his case.

The judge's jurisdiction in this matter terminated when his decision was issued on May 13, 1994. Commission Procedural Rule 69(b), 29 C.F.R.

2700.69(b) (1993). Under the Mine Act and the Commission's procedural rules, relief from a judge's decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. 823(d)(2); 29 C.F.R. 2700.70(a). We deem Mr. Patsy's letter to be a timely filed Petition for Discretionary Review, which we grant. See, e.g., Middle States Resources, Inc., 10 FMSHRC 1130 (September 1988).

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It appears that Mr. Patsy now wishes to pursue his complaint with the Commission despite his earlier statements to the judge expressing doubts about proceeding in an administrative hearing. Accordingly, we remand this matter to the judge, who shall again schedule it for hearing.

For the reasons set forth above, we vacate the judge's Order of Dismissal and remand this matter for further proceedings.

Mary Lu Jordan, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

Arlene Holen, Commissioner