

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW
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WASHINGTON, D.C. 20001

August 29, 2006

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket Nos. SE 2005-301-M
	:	SE 2006-131-M
v.	:	SE 2006-167-M
	:	
HOSEA O. WEAVER & SONS, INC.	:	

ORDER

On August 11, 2006, the Commission received from Hosea O. Weaver & Sons, Inc. (“Weaver”) a Petition for Discretionary Review, or in the Alternative, Petition for Interlocutory Review, in these consolidated proceedings. This petition sought review of Commission Administrative Law Judge David F. Barbour’s July 13, 2006 order denying Weaver’s motion for summary decision and granting the Secretary of Labor’s motion for summary decision on the issue of whether the Department of Labor’s Mine Safety and Health Administration (“MSHA”) had jurisdiction over the activities in question. On August 15, 2006, the Secretary of Labor filed a response opposing Weaver’s petition and moving that it be dismissed.¹

Also on August 11, 2006, Weaver filed with Judge Barbour a motion for certification of his interlocutory ruling to the Commission, pursuant to Commission Rule 76(a)(1)(i). The judge denied Weaver’s motion on August 17, 2006.

Under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2004), and the Commission’s procedural rules, relief from a judge’s final decision may be sought by filing a petition for review within 30 days of its issuance. 30 U.S.C. § 823(d)(2)(A)(i); 20 C.F.R. § 2700.70(a). Here, however, the judge’s order was an interlocutory ruling on motions filed by the parties, not a final disposition of the proceedings. Thus, we cannot consider Weaver’s petition under Commission Procedural Rule 70(a).

¹ The Secretary filed a supplemental motion in opposition to Weaver’s petition on August 24, 2006.

The Commission's rule on interlocutory review sets forth the prerequisites for such review, stating that the Commission may grant interlocutory review only after a judge "has certified . . . that his interlocutory ruling involves a controlling question of law and that in his opinion immediate review will materially advance the final disposition of the proceeding," or "denied a party's motion for [such] certification . . . and the party files with the Commission a petition for interlocutory review within 30 days of the Judge's denial of such motion." 29 C.F.R. § 2700.76(a)(1). Here, Weaver filed its petition for interlocutory review prematurely because the judge had not yet ruled on the company's pending motion for certification.

Accordingly, we grant the Secretary's August 15 motion to dismiss.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

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