

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
1331 Pennsylvania Avenue NW, Suite 520N  
Washington, D.C. 20004

July 19, 2016

SCOTT D. MCGLOTHLIN,  
Complainant,

v.

DOMINION COAL CORPORATION,  
Respondent.

DISCRIMINATION PROCEEDING

Docket No. VA 2014-233-D  
NORT-CD-2013-04

Mine: Dominion No. 7  
Mine ID: 44-06499

**ORDER SCHEDULING BRIEFING**

Before: Judge Feldman

The initial decision on relief in this discrimination matter awarded back pay to Scott D. McGlothlin, but reduced McGlothlin’s attorney fees by \$31,745.66 — from \$88,975.48 to \$57,229.82. 38 FMSHRC 225, 268 (Feb. 2016) (ALJ). The Commission granted McGlothlin’s petition for discretionary review challenging the reduction in attorney fees. Dominion Coal Corp. (“Dominion”) did not oppose McGlothlin’s petition. On March 30, 2016, the Commission reversed the initial decision on relief, approving the \$88,975.48 in fees proposed by the parties in their November 11, 2015, settlement proposal. The Commission held:

Where, as here, *the parties have agreed to stipulated attorneys’ fees* and there are no allegations or evidence that such an amount would adversely affect the remedy afforded the discriminatee, the Judge erred in rejecting the settlement based upon the agreed upon amount of attorneys’ fees.

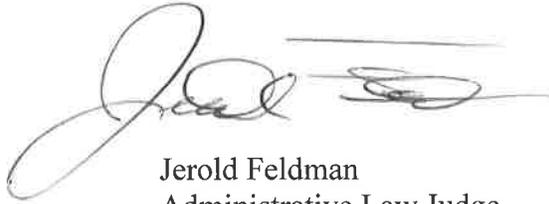
38 FMSHRC 401, 402 (Mar. 2016) (emphasis added).

On June 20, 2016, McGlothlin’s counsel filed a motion for award of attorney fees requesting an additional \$41,525.00 for reported legal services rendered during the period July 1, 2015, through June 20, 2016. This period represents work performed to effectuate the parties’ purported November 11 proposed settlement terms with respect to attorney fees, which is now apparently in dispute.<sup>1</sup> This case has now been remanded “for a determination of any further award of attorneys’ fees.” 38 FMSHRC \_\_, slip op. at 2 (July 15, 2016).

<sup>1</sup> Dominion asserts that the terms of the November 11 settlement proposal do not provide for additional attorney fees beyond the \$88,975.48 proposed by the parties. However, given McGlothlin’s current posture regarding additional attorney fees, despite the parties’ proposed settlement terms, Dominion now argues that McGlothlin’s counsels’ November 11 “fee petition was unreasonably excessive in the amount of \$31,745.66.” Dominion’s Response, at 12 (July 1, 2016).

The parties have been given an opportunity to advise whether they desire to file briefs in response to the Commission's remand. Dominion advises that it wishes to file a brief to contest "the reasonableness of additional attorney fees" sought by McGlothlin's counsel. McGlothlin opposes the filing of any additional briefs.

**IT IS ORDERED** that Dominion's request to file additional briefing in this matter **IS GRANTED**. As the parties have already filed relevant briefs, Dominion's request will be limited solely to the issue of the reasonableness of the \$41,525.00 in attorney fees sought. Dominion's brief should be filed on or before **July 29, 2016**, and should be limited to no more than 15 pages double-spaced. Any reply by McGlothlin should be filed no later than **August 5, 2016**.



Handwritten signature of Jerold Feldman in black ink, consisting of a large, stylized 'J' followed by 'erold' and a horizontal line with a flourish.

Jerold Feldman  
Administrative Law Judge

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