

CCASE:

STEVE LTURNER V.TERRY GLENN COAL

DDATE:

19850122

TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

STEVE L. TURNER,
COMPLAINANT
v.

DISCRIMINATION PROCEEDING

Docket No. KENT 84-233-D

TERRY GLENN COAL COMPANY,
RESPONDENT

MSHA Case No. BARB CD 84-36

DECISION

Before: Judge Melick

On August 13, 1984, the Complainant, Steve Turner, filed a complaint of discrimination under section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et. seq., "the Act," with the Secretary of Labor, Mine Safety and Health Administration (MSHA) against the Terry Glenn Coal Company. That complaint was denied by MSHA and Mr. Turner thereaPPer filed a complaint of discrimination with this Commission on his own behalf under section 105(c)(3) of the Act. Mr. Turner, alleges that he was discharged in violation of section 105(c) of the Act because he was falsely accused of smoking in the mine. More specifically he alleges as follows:

A cigarette butt was found at the North Main Headdrive, no one saw anyone smoking and everyone entering and exiting the working place uses this route. It could have been anyone in the mines but I was accused of smoking. They had the opportunity to search me, but they declined my offer. Because of this accusation I lost my job and a whole lot more.

The Terry Glenn Coal Company (Terry Glenn) thereafter responded, inter alia, that the "complaint fails to state a claim upon which relief can be granted under section 105(c)." That contention may be taken as a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. For the purposes of such a motion, the well pleaded material allegations of the complaint are taken as admitted. 2A Moore's Federal Practice, 12.08. A complaint should not be dismissed for insufficiency unless it appears to a certainty that the complainant is entitled to no relief under any state of facts which could be proved in support of a claim. Pleadings are, moreover, to be liberally construed and mere vagueness or lack of detail is not grounds for a motion to dismiss. Id.

Section 105(c)(1) of the Act provides as follows:

No person shall discharge or in any manner discriminate against or cause to be discharged or cause discrimination against or otherwise interfere with the exercise of the statutory rights of any miner, representative of miners or applicant for employment in any coal or other mine subject to this Act because such miner, representative of miners or applicant for employment has filed or made a complaint under or related to this Act, including a complaint notifying the operator or the operator's agent, or the representative of the miners at the coal or other mine of an alleged danger or safety or health violation in a coal or other mine or because such miner, representative of miners or applicant for employment is the subject of medical evaluations and potential transfer under a standard published pursuant to section 101 or because such representative of miners or applicant for employment has instituted or caused to be instituted any proceedings under or related to this Act or has testified or is about to testify in any such proceeding, or because of the exercise by such miner, representative of miners or applicant for employment on behalf of himself or others of any statutory right afforded by this Act.

In order to establish a prima facie violation of section 105(c)(1) the Complainant must prove that he engaged in an activity protected by that section and that his discharge was motivated in any part by that protected activity. Secretary ex. rel. David Pasula v. Consolidation Coal Company, 2 FMSHRC 2786 (1980), rev'd on other grounds, sub nom, Consolidation Coal Company v. Secretary, 663 F.2d 1211 (3rd Cir., 1981). In this case Mr. Turner asserts that he was discharged solely because of false accusations that he had been smoking a cigarette in the mine. Even assuming that the allegation is true however, it is clearly not sufficient to create a claim under section 105(c)(1) of the Act. That section does not provide redress for a discharge that may

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have been unfair if that discharge was not caused in any part by an activity protected by the Act. Accordingly the complaint herein must be denied and the case dismissed.

Gary Melick
Assistant Chief Administrative Law Judge