

CCASE:

JERRY JOSEPH v. LEECO

DDATE:

19850503

TTEXT:

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

JERRY JOSEPH,
COMPLAINANT

DISCRIMINATION PROCEEDING

v.

Docket No. KENT 85-74-D
BARB CD 85-05

LEECO, INC.,
RESPONDENT

No. 29 Mine

DECISION

Before: Judge Fauver

This proceeding was brought by Jerry Joseph under section 105(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. The complaint states that Mr. Joseph injured his right knee while working at the subject mine on August 29, 1983, and because of the injury he has been unable to work at the mine, and Leeco, Inc., has refused to pay his medical bills and other compensation he seeks.

Pursuant to section 105(c)(2) of the Act, Mr. Joseph first filed a complaint with the Secretary of Labor (Mine Safety and Health Administration). After investigation, the Secretary found that no violation of section 105(c) had occurred. Mr. Joseph then exercised his right to file a complaint before this Commission.

Leeco, Inc., has moved to dismiss the complaint for failure to state a claim for which relief can be granted under section 105(c)(1) of the Act.

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

(c)(1) 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 miner, representative of miners or applicant for employment has instituted or caused to be instituted any proceeding 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.

I agree with the motion to dismiss. The complaint does not allege or indicate that Mr. Joseph was in any manner discriminated against because of an activity covered by section 105(c)(1) of the Act.

ORDER

WHEREFORE IT IS ORDERED that Respondent's motion to dismiss is GRANTED and this proceeding is DISMISSED.

William Fauver
Administrative Law Judge