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JOHN HARRIS V. BENJAMIN COAL
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

JOHN A. HARRIS,
COMPLAINANT

DISCRIMINATION PROCEEDING

v.

Docket No. PENN 87-72-D
MSHA Case No. PITT CD 86-20

BENJAMIN COAL COMPANY,
RESPONDENT

Benjamin No. 1 Strip Mine

ORDER DISMISSING COMPLAINT

Before: Judge Koutras

Statement of the Case

This proceeding concerns a pro se discrimination complaint filed by the complainant John A. Harris against the respondent pursuant to section 105(c) of the Federal Mine Safety and Health Act of 1977. The pleadings and other information of record reflects that Mr. Harris was employed by the respondent as a blaster, and that as a result of a shot which he detonated a mine foreman was killed by fly rock from the blast. As a further result of this incident, Mr. Harris' state blaster's license was suspended, and he was subsequently discharged by the respondent on August 12, 1986, for violation of company safety practices and for "a pattern of disregard" for company safety procedures and practices.

Complainant filed his initial complaint with the Secretary of Labor, Mine Safety and Health Administration (MSHA), and after completion of its investigation, MSHA advised the complainant that its investigation of his complaint disclosed no discrimination against him by the respondent. The basis for the subsequent pro se complaint filed with the Commission is the assertion by the complainant that his termination "was very unfair," and he requested reinstatement, back pay, and a "clearing of my name by Benjamin Coal Company."

After review of the complaint and the information submitted by the complainant with respect to the circumstances surrounding his discharge, I conclude that there was nothing to suggest that

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his discharge was the result of any rights or protections afforded him under section 105(c) of the Act. In short, I concluded that based on the information submitted by the complainant in support of his complaint, there was no claim or cause of action for which relief could be granted under section 105(c) of the Act. Under the circumstances, I issued an Order to Show Cause on July 13, 1987, directing the complainant to state why his complaint should not be dismissed for failure to state a viable claim under section 105(c) of the Act.

The complainant has not responded to my Order to Show Cause. The postal service certified mail receipt reflects that he received the Order on August 5, 1987. Under the circumstances, I conclude that this complaint should be dismissed for failure to state a cause of action or claim and for the failure by the complainant to respond to my Order of July 13, 1987.

ORDER

In view of the foregoing, this complaint IS DISMISSED.

George A. Koutras
Administrative Law Judge