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MSHA, New Elk Coal reach settlement *Miner who filed discrimination complaint to receive \$115,000*

ARLINGTON, Va. – The U.S. Department of Labor’s Mine Safety and Health Administration today announced that New Elk Coal Co. has agreed to pay approximately \$115,000 to a miner whose employment was terminated shortly after he filed a hazard complaint. The company also has agreed to pay MSHA a civil penalty of \$10,000.

In April 2012, an electrician working at the New Elk Mine in Trinidad, Colo., contacted MSHA about hazardous conditions along a beltline that he claimed were not being properly addressed by his supervisors. The day after he filed the complaint, MSHA issued several citations to the mine. His position and shift changed multiple times over the next three weeks and, on May 12, he was terminated. One month later, the miner filed a complaint of discrimination with MSHA, alleging that he had been fired for notifying the agency of the mine’s hazardous conditions.

In a complaint filed with the Federal Mine Safety and Health Review Commission, MSHA sought a finding that New Elk Coal Co. unlawfully had discriminated against the employee in violation of Section 105(c) of the Federal Mine Safety and Health Act of 1977. The statute protects miners, their representatives and applicants for employment from retaliation for engaging in safety and/or health-related activities such as identifying hazards, asking for MSHA inspections or refusing to engage in an unsafe act.

An administrative law judge ordered during an August 2012 hearing that the miner be temporarily reinstated. However, based on an agreement by the parties, the miner received approximately seven months of pay in lieu of returning to work. Prior to a scheduled hearing on the merits of the miner’s discrimination claim, the parties settled the case, with New Elk Mining Co. agreeing to compensate him for an additional 10 months of pay.

In a separate case last January, the parties reached agreement that resolved a claim of discriminatory termination of a supervisor at the same mine. In that case, too, New Elk agreed to pay a civil penalty of \$10,000 to MSHA, plus approximately \$88,000 to the terminated employee. Additionally, the company agreed to provide company-wide training regarding miners’ rights.

“All miners, supervisors and contractors have the right to identify hazardous conditions and refuse unsafe work without fear of discrimination or retaliation,” said Joseph A. Main, assistant secretary of labor for mine safety and health. “They also have the right to be trained in the health and safety aspects of tasks, including recognizing hazards at the mine and the proper procedures for reporting those hazards.”

Working with the Labor Department’s Office of the Solicitor, MSHA filed 46 temporary reinstatement requests and 34 105(c) discrimination cases on behalf of miners in 2012, the most ever in a year.

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