

COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. **13-MSRC-086**

COMMONWEALTH OF KENTUCKY,
OFFICE OF MINE SAFETY AND LICENSING

COMPLAINANT

FINAL ORDER

ANDREW J. JOHNSON

RESPONDENTS

* * * * *

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant, Office of Mine Safety and Licensing (OMSL) and Respondent Greg Davenport, and the members of the Commission having reviewed the Settlement Agreement filed on or after February 13, 2014 in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY **ORDERED** as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The formal hearing and **pre-hearing** conference are **CANCELLED**;
3. The **Settlement Agreement** signed by the parties and filed with the Commission is hereby **incorporated by reference** as if reproduced herein in full as a material part of this **FINAL ORDER**.

A copy is attached hereto;

4. This Final Order only resolves the matters referenced herein, and any new enforcement action or subsequent penalties imposed during any probationary period are in addition to and not in lieu of those that may be sought by OMSL for the acts or omissions during that probationary period. This Final Order in no way prohibits OMSL from investigating or filing legal action based upon other activities or omissions by the Respondent not arising from the factual basis of the original violation and resolved herein.
5. This Final Order shall be considered to constitute a “first offense” as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent, resulting in an adjudication of guilt by the Commission, shall be deemed “subsequent offenses” as defined by 805 KAR 8:010, Section 1(13);
6. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, in these matters. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and
7. Appellate rights: Pursuant to KRS 351.194(8) and KRS 13B.140(1), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of this Final Order. The petition shall include the names and addresses of all parties of record in this proceeding and shall include a statement of the grounds upon which review is requested. A copy

of this Final Order shall accompany the petition. Copies of the petition must be served upon the Commission and all parties of record in this proceeding.

Entered this the 13TH day of February 2014.



Hon. William D. Doan, Chair
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ORDER was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this 14TH day of February 2014:

ANDREW J JOHNSON
233 RIGHT FORK 58 BRANCH
RACCOON KY 41557-8649

And by messenger mail to:

HON. CARRIE SLAYTON
OFFICE OF LEGAL SERVICES
NATURAL RESOURCES LEGAL DIVISION
#2 HUDSON HOLLOW
FRANKFORT KY 40601
502/ **564- 2356**
FAX 502/ 564 - 9212
Counsel for OMSL

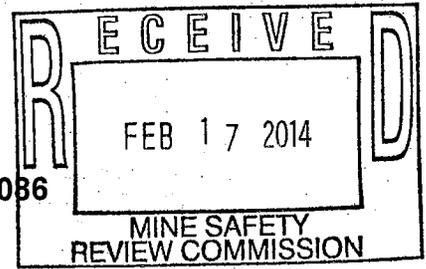
And the original shall be kept on file:

Mine Safety Review Commission
132 Brighton Park Blvd.
Frankfort Ky 40601



Bryon Alan Thompson
Hearing Officer & General Counsel
Mine Safety Review Commission

COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. 13-MSRC-086



KENTUCKY OFFICE OF MINE
SAFETY AND LICENSING

COMPLAINANT

v.

SETTLEMENT AGREEMENT BETWEEN
OMSL AND ANDREW J. JOHNSON

ANDREW J. JOHNSON

RESPONDENT

Comes the Complainant, the Kentucky Office of Mine Safety and Licensing ("OMSL") and Respondent, Andrew J. Johnson ("Johnson"), and hereby state that they have agreed to a settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration for the final resolution of this action against him as set forth herein, and the cancellation of the hearing scheduled for February 13, 2014, Andrew J. Johnson admits that on or about June 22, 2010, at the Blair Coal Company, Inc. #16 mine, there was evidence that two roof control violations had occurred.

Johnson neither admits nor denies the commission of or responsibility for the violations cited in the following Closure Orders issued to him and alleged in OMSL's Complaint:

- (a) Closure Order No. 10621-024 for violation of 805 KAR 5:030, Section 2(1)(a) for traveling and working beyond roof support by painting a center line on the

mine roof in the #2 entry working face – approximately 10' inby the last row of undisturbed roof bolts;

(b) Closure Order No. 10621-025 for violation of 805 KAR 5:070, Section 11(4)(a) for not replacing several damaged roof bolts at the last open intersection of the #1 entry, for failing to firmly secure bearing plates against the mine roof, and failing to spot bolt the right inby corner due to wide bolt spacing.

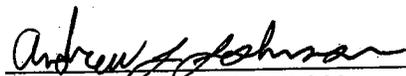
Therefore, Johnson and OMSL hereby agree to the following:

1. That Johnson's Underground Mine Foreman Certificate (No. A-139-02), Shot Firer-Conventional Certificate (No. PE-008-02), MET Certificate (No. PE-186-08), Shot Firer-Solid Blasting Certificate (No. PE-015-02), Gas Detection Certificate (No. PE-567-96), Drill Operator Certificate (No. PE-015-02), and Underground Miner Certificate be placed in probation for a period of one (1) year, effective upon entry of the Commission's Final Order incorporating this Settlement Agreement.
2. During the probationary period, Johnson shall comply with all state and federal mine safety laws and regulations. The willful violation by Johnson of any said laws or regulations may result in OMSL filing a motion with the Mine Safety Review Commission to revoke his certificates for the remainder of the probationary period or to revoke them for not less than three (3) years; however, Johnson does not automatically consent to any future revocation in this Settlement Agreement.
3. Johnson agrees that this Settlement Agreement and any final order issued herein by the Mine Safety Review Commission will be considered by the Commission to constitute a "first offense," as that term is defined at 805 KAR 8:010, Section 1(5).

4. Johnson understands and agrees that he has had the opportunity to retain an attorney to represent him in this matter, but he has chosen to represent himself. Johnson further states that he has carefully read this Settlement Agreement (or that the Settlement Agreement has been read to him), that he has carefully considered the Agreement prior to signing it, and that he understands and agrees to its terms and provisions.

5. Johnson and OMSL agree that this Settlement Agreement pertains to and resolves only Johnson's responsibility for the violations cited in Closure Order Nos. 10621-024 and 10621-025, and does not apply to any other person, violation, citation, or licensed facility.

6. OMSL and Johnson acknowledge and agree that there are no further promises, inducements, representations or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.



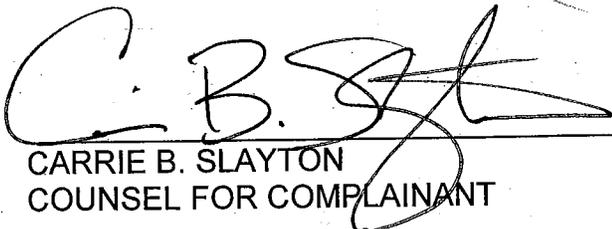
ANDREW J. JOHNSON

4 Feb 14
DATE



FRANKLIN REED, EXECUTIVE DIRECTOR
OMSL

2/13/14
DATE



CARRIE B. SLAYTON
COUNSEL FOR COMPLAINANT

2/13/14
DATE