

COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. **13-MSRC-070**

COMMONWEALTH OF KENTUCKY,
OFFICE OF MINE SAFETY AND LICENSING

COMPLAINANT

v.

FINAL ORDER

VONNY W. JONES

RESPONDENT

Introduction

This matter comes before the Mine Safety Review Commission (“Commission” or “MSRC”) upon a Complaint which the Commission heard on November 14, 2013. Vonny Jones (“Jones” or “Respondent”) filed an Answer; appeared and participated in the hearing. The Office of Mine Safety and Licensing (“OMSL”) was represented by Hon. Samuel J. Ottley III. OMSL called one witness, Ralph Crawford, Jones testified and called no witnesses. The issues centered on the length, quality and subject coverage of the training provided by Jones. Having considered the evidence presented, as well as the arguments of counsel, and being otherwise sufficiently advised, it is hereby ordered and adjudged as follows:

Procedural History

On June 20, 2013, the Commonwealth of Kentucky, Office of Mine Safety and Licensing (“OMSL”) filed a Complaint, 13-MSRC-070, with MSRC against

the Respondent Jones. The Complaint contained allegations as more specifically detailed in the non-compliances of record herein and below. The allegations concern deficiencies in the length, quality and subject coverage of the training provided by Jones.

The Complaint identified the parties and established the jurisdiction of the Commission relevant thereto pursuant to KRS 351 and 352 which was not contested and thus not at issue herein.

The Complaint made the following allegations in the Complaint in support of the violations noted on the NonCompliances (“NNC”) that were attached to the Complaint:

That between November 19, 2011 and November 30, 2011 an inspector for OMSL received an EF-16 Retraining form for a MET class taught on November 19, 2011 and signed by Jones. The inspector checked the class notification record and learned that Appalachian was closed on November 19, 2011. The inspector became suspicious of the EF-16 form after learning that Appalachian was closed, and contacted Jones in order to inquire whether he had taught a class on that date.

That Jones informed the inspector that he had taught an eight (8) hour annual underground course on November 19, 2011 and gave the inspector the names of five students who were in the class, which included: Derek Neal, Arthur Wynn, David S. Asher, Mathew Lane, and Gerald Smith.

Further that on December 1, 2011 two inspectors went to Appalachian in

order to interview Jones. While there the inspectors obtained enrollment and copies of the 5000-23 forms for the students enrolled in the annual underground retraining course. The enrollment records and the 5000-23 forms verified that Derek Neal, Arthur Wynn, David S. Asher, and Mathew Lane had been in the class, but there was no enrollment record or 5000-23 form for Gerald Smith.

Additionally it is alleged that after receiving the enrollment records for the annual underground course, the inspectors inquired about the EF- 16 form for the MET annual retraining course. Jones "reluctantly" produced the enrollment and EF-16 forms for that class, which showed that Justin T. Daugherty had been enrolled in a Surface MET Annual retraining course on November 19, 2011 and that the course had the same starting and stopping times as the underground annual retraining course.

OMSL alleged that the inspectors interviewed Justin T. Daugherty, Mathew Lane, David S. Asher, and Derek Neal and all stated that both classes were taught at the same time and in the same room and that the day was split between the annual underground course and the MET course. There was some variation as to how much time was devoted to each of these subjects during the course of the day. OMSL contends that the MET course and the annual underground course cannot be combined in the same class.

As a result the inspectors issued the following two Notices of Non-Compliance:

First, that Jones was issued a Notice of Non-Compliance No. 11105020 on December 8, 2011 for violation of 805 KAR 7.080 10(4): violation of responsibilities as a mining emergency technician (MET) instructor — respondent taught an annual surface MET retraining course at the same time and in the same room as an annual underground mining retraining course and therefore did not cover MET material for the amount of time listed on the MET Recertification Form, EF- 16. A copy of the Notice of Non-Compliance was attached to the Complaint as Exhibit 1.

Second, that Jones was issued a Notice of Non-Compliance No. 11105021 on December 8, 2011 for violation of 805 KAR 7:030 1(4): underground annual retraining violation —while teaching the MET course respondent taught an annual underground course. The MET retraining portion of the class lasted for 1.5 to 5 hours in duration, which is not an adequate amount of time to cover all the required annual underground materials. Also, transportation controls, communication systems, health and safety standards, barricading, and explosives were not taught in this course. A copy of the Notice of Non-Compliance was attached as Exhibit 2.

At the call of the hearing on November 14, 2013, OMSL called one witness and presented the two exhibits as attached to the Complaint. Respondent Jones appeared pro se and called no witnesses.

The testimony of the OMSL witness was consistent with and reiterated the allegations alleged in the complaint as written above. However his

testimony placed emphasis upon the need for the instructor to be present during instruction even if the presentation was pre-recorded. Additionally that the types of training he witnessed required different lengths of time to instruct and therefore could not end at the same time but they did and were therefore insufficient.

Respondent Jones stated that he did not recall the events as related by OMSL during the time they were alleged. Jones insisted that his training took the required time and was adequate and thorough. To substantiate that claim he noted that the students signed forms indicating the adequacy of the training and that coal miners would never falsify records. Jones did not call analyst Jason Lawson but did attach Lawson's class evaluation to his Answer and reminded the Commission of that document and its high rating at the hearing.

Jones admitted training two classes at the same time in different rooms, one for Mine Emergency Technician ("MET") retraining and the other for underground miner retraining. Jones stated that upon being informed that this practice was improper he immediately ceased. Additionally Jones stated that there was sufficient overlap between certain parts of the courses, MET and basic First Aid, so that it was possible to end them at the same time. Jones admitted that he was out of the classroom(s) approximately twenty to twenty-five minutes at the most.

When questioned about omitting certain sections Jones stated that he did not recall specifics but was confident that all subjects were covered. Jones concluded his testimony by insisting that permanent revocation was too harsh a penalty for a first offense.

After considering all of the evidence adduced at the hearing, the Commission submits the following Findings of Fact, Conclusions of Law, and Final Order.

Findings of Fact

Based upon the evidence admitted, and the record taken as a whole, the Commission finds the following facts as established by a preponderance of the evidence:

1. OMSL is the agency charged with administering the Commonwealth's safety laws as set forth in KRS Chapters 351 and 352 and the Kentucky Administrative Regulations adopted pursuant thereto.
2. Respondent was at all times relevant to this action residents of Kentucky, at the address provided in the Complaint and held the certificates indicated in the Complaint issued by the Commonwealth of Kentucky and subject to the jurisdiction of MSRC.
3. Respondent was at all relevant times an instructor and had the certification for various capacities as alleged in the Complaint.
4. Service of the Order and Complaint upon Respondent is determined to be perfected pursuant to 825 KAR 1:020 Section 5 (3) and KRS 13B.050.
5. Jurisdiction for this action is founded upon KRS 352.390, which provides that the "Mine Safety Review Commission shall revoke, suspend, or probate certificates if it is established in the judgment of the Commission that the holder has become unworthy to hold the certificate by reason of violation of law, intemperate habits, incapacity, abuse of authority, failure to comply

with the mining laws of the Commonwealth of Kentucky, or for other just cause;" on KRS 351.025(1), which requires the Department of Mines and Minerals (now the Office of Mine Safety and Licensing) to "promulgate administrative regulations...for the imposition and enforcement of sanctions against certified...personnel...whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death;" and on 805 KAR 8:030 ("Criteria for the imposition and enforcement of sanctions against certified miners").

6. Probable Cause was found on July 11, 2013 and Respondent Jones filed an Answer thereafter on July 22, 2013.
7. Respondents Jones appeared pro se at the hearing and participated.
8. At the hearing, OMSL called its witness; Ralph Crawford and he was qualified as an expert witness. His testimony was as related above in the complaint and was credible and is included as a finding of fact as if fully set out hereafter.
9. Jones admitted that he was out of the room(s) during training and ending MET and underground retraining at the same time. He also admitted teaching two classes at the same time but in different rooms.
10. Jones repeatedly denied recollection of specifics of the events on the day of the inspection on December 8, 2011.
11. Based upon the testimony and evidence the crux of the violations are essentially three fold: One, that Jones taught an annual surface MET

refraining course at the same time and in the same room as an annual underground mining retraining course and therefore did not cover MET material for the required amount of time; and two the MET retraining portion of the class lasted for 1.5 to 5 hours in duration which is not an adequate amount of time to cover all the required annual underground materials; and third transportation controls, communication systems, health and safety standards, barricading, and explosives were not taught.

Conclusions of Law

KRS 352.390, "Revocation of Certificates", provides as follows:

The Mine Safety Review Commission shall revoke, suspend, or probate certificates if it is established in the judgment of the commission that the holder has become unworthy to hold the certificate by reason of violation of law, intemperate habits, incapacity, abuse of authority, failure to comply with the mining laws of the Commonwealth of Kentucky, or for other just cause. The same procedure provided in subsections (10) and (11) of KRS 351.102 shall apply to the certificate holder.

The criteria for the imposition and enforcement of sanctions against certified miners is contained in 805 KAR 8:030, which provides for the enforcement against certified miners whose intentional violation of mine safety laws places miners in imminent danger of serious injury or death. As defined in KRS 352.010(O),

"Imminent danger" means the existence of any condition or practice which could reasonably be expected to cause death or serious physical harm before the condition or practice can be abated."

This Commission's criteria for imposing penalties against certified miners is set forth in 825 KAR 1:030, as follows:

- (1) Cooperation with investigators;
 - (2) The severity of the harm done, such as whether the offense resulted in:
 - (a) Death;
 - (b) Serious physical injury; or
 - (c) The placement of an individual in imminent harm;
 - (3) Acceptance of responsibility for actions;
 - (4) History of violations;
 - (5) Adjudicated violations in other states;
 - (6) Mitigating circumstances; and
 - (7) Aggravating circumstances.
- (29 Ky.R. 201; Am. 1272; eff. 11-12-02).

Jones admitted being absent for portions of his classes and admitted teaching in two rooms at the same time, but to his credit no one disputes the fact that he corrected by placing the students in one room. Jones did not directly deny the allegations of completeness of his training beyond stating that his usual practice is to cover all subjects for the required amount of time. In both his Answer and testimony Jones repeatedly stated that his recollection of the events of that day are poor which is understandable for events that occurred about a year and a half before the hearing. However Jones was aware of the NNC in approximately a month and was immediately aware of the inspections and the documents he was required to keep and produce and the eventuality of possible enforcement action, thus lack of "exactly" remembering is no excuse.

There is deductive proof that subject matters were omitted by virtue of them occurring in less than the required time, somewhere between 1.5 and 5

hours. One could speculate that they may have been part of the class, which Jones insists, but certainly not covered for the regulatory required time.

Based upon the evidence admitted and the record taken as a whole, the Commission finds the foregoing facts are established by a preponderance of the evidence. By reason of his role in and responsibilities for the violations of Kentucky's mine safety laws as set forth above, Respondent is subject to the imposition of sanctions as provided in KRS 351.025, 352.390 and 805 KAR 8:030 and 805 KAR 8:060 Section 2.

Final Order

The General Assembly has declared in KRS 351.101(1) that the highest priority is the safety of the coal industry's most valuable resource, the miner. In KRS 351.241(6), the Legislature recognized that the American zeal for work and productivity very frequently causes the miner to give second priority to normal safety measures and precautions.

Coal production is important to this state; however, as recognized by the Legislature, highest priority must be given to the safety of the miners. Mine safety can be improved by enforcement of sanctions against certified personnel and operators whose willful violation of mine safety laws place miners in imminent danger of serious injury or death.

In the case now before the Commission, Respondent Jones demonstrated negligence and disregard for safety because of his absence during portions of

the re-training and because the length of the training was clearly inadequate thus whether or not all the required subjects were covered, the training cannot be considered complete by virtue of the time allocated. Eight hours means eight *classroom* hours for teacher and student alike. These violations, taken together, demonstrate a willful violation of mine safety laws that placed miners in danger of serious injury or death.

IT IS THEREFORE ORDERED, that pursuant to KRS 351.194 (5) and (6); 805 KAR 8:030,

1. Respondent Vonny Jones' Underground Mine Foreman Certificate (No. A-49-01); Assistant Mine Foreman Certificate (No. B-23-99); MET Instructor Certificate (No. WI-009-05); Mining Instructor-Underground Certificate (No. MI-20-04); Surface Mine Foreman Certificate (No. SE-176-06); Mining Instructor-Surface Certificate (No. SI-39-06) be revoked for no less than five (5) years.
2. Order that Respondent Vonny Jones' MET Certificate (No. HN-003-05) be revoked for two (2) years.
3. Order that Respondent Vonny Jones' Gas Detection Certificate (No. HD-764-94); Temporary Underground Miner (Certificate No. HN-0686-1 1) Underground Miner; Temporary Surface Miner (Certificate No. HN-0396-1 1); and Surface Miner Certificates be placed on probation for one (1) year.

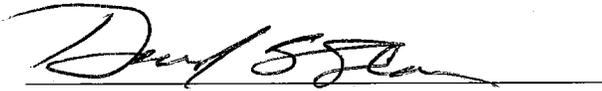
4. That during any periods of probation Respondent Jones is required to comply with all state and federal mine safety laws and regulations; and that the willful violation of any of said laws or regulations may result in OMSL filing a motion with the Mine Safety Review Commission to revoke Respondent Jones' certificates for the remainder of the probationary period.
5. That the final order issued herein by the Commission regarding the Respondent Jones constitutes a "first offense", as that term is defined in 805 KAR 8:010, Section 1(5); and that any future adjudication against the Respondent by the Commission regarding a separate alleged offense be deemed a "subsequent offense" as defined in 805 KAR 8:010, Section 1(13);section 1(13).

THIS IS A FINAL AND APPEALABLE ORDER, after considering the evidence presented at the hearing and the pleadings and exhibits of record the Commission renders the forgoing Findings of Fact, Conclusions of Law, and this Final Order. Pursuant to KRS 351.194(8), an appeal of this Final Order shall be filed in the Franklin Circuit Court within thirty (30) days of the entry of this order.

SO ORDERED, this the 9th day of January, 2014.



HON. WILLIAM D. DONAN, CHAIR
MINE SAFETY REVIEW COMMISSION



HON. DAVID BRYAN SLOAN,
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **FINAL ORDER** was mailed by certified mail, and by regular mail, postage prepaid, to the following, this the 10th day of January, 2014:

VONNY V. JONES
P O BOX 723
HARLAN KY 40831

VONNY V. JONES
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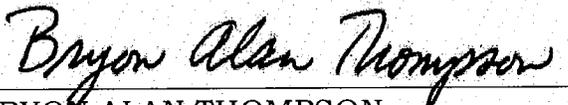
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And by messenger mail to:

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And the original shall be kept on file:

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