

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
132 BRIGHTON PARK BLVD.
FRANKFORT, KENTUCKY 40601
TELEPHONE: (502) 573 - 0316
FAX: (502) 573-0344

COMMISSIONERS

JOE F. CHILDERS, CHAIR
WILLIAM D. DONAN
STEPHEN A. SANDERS

BRYON ALAN THOMPSON
GENERAL COUNSEL

**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF DECEMBER 10, 2009: A MEETING OF THE MINE SAFETY REVIEW COMMISSION (HEREINAFTER "MSRC" OR "COMMISSION") WAS HELD IN THE CONFERENCE AND HEARING ROOM OF THE COMMISSION LOCATED AT 132 BRIGHTON PARK BLVD., FRANKFORT KY.

- ❑ **Members Present:** Chair Joe Childers, Commissioner William D Donan and Commissioner Stephen A. Sanders were present. Also in attendance MSRC Hearing Officer and General Counsel Bryon Alan Thompson.
- ❑ The meeting was **called to order** at 9:00 a.m. EST
- ❑ **Declaration of a Quorum:** Upon the call of the meeting, Commissioner Childers made a motion that a quorum was present, which was seconded as appropriate. The motion carried unanimously, and was so Ordered.
- ❑ **Welcome Guests:** Hon. Mike Haines, Energy and Environment Cabinet General Counsel was present and also staff attorneys for OGC; Smock, Boyd, Pete Thompson, Patrick and Richardson who were representing the Office of Mine Safety and Licensing. The Office of General Counsel was assisted by Kari Sutherland, Mary McCoy, and Tara New.
- ❑ The **minutes** for the meeting on **11/12/09** were discussed. Commissioner Donan made a motion for approval, which was seconded. The motion carried unanimously, and was so Ordered. Chair Childers signed the minutes.

- **OMSL Motions for Sanctions, Permanent or one (1) year Revocation for failure to comply with terms of the Settlement Agreement & Final Order by MSRC resolving KRS 351.120(12) workplace suspension for alcohol and substance abuse:**
 - 08-MSRC-271 Jason Lee Rowe was called. The respondent did not appear or participate and no one on his behalf filed any response. Thus OMSL moved for **permanent revocation** based upon noncompliance with the required submittals, drug testing or evaluation terms of the Settlement Agreement incorporated as the Final Order of this Commission. This was found to be a violation of the Final Order. Commissioner Donan made a motion to **grant** the motion which was seconded as appropriate by Commissioner Sanders and approved unanimously and was so Ordered upon the signature of Childers.
 - 09-MSRC-064, Paul Sparkman and 08-MSRC-207 Christopher Bryant, were each called and appeared. They admitted violating the settlement agreement but had extenuating circumstances, thus OMSL agreed to an amended **settlement agreement** in regard to his certifications. That Motion was seconded as appropriate and **approved** unanimously.
 - 09-MSRC-067 Brayant Lee Anglin, 08-MSRC-250 Jason B. Combs and 09-MSRC-011 Keith Adams were called, and the Commission was informed that they needed to be continued for service or to obtain counsel whereupon OMSL moved to **continue** to the December meeting for good cause shown. This Motion was seconded as appropriate and **approved** unanimously.
- **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – “simple” revocations:**
 - The Commission discussed each in turn the procedurally similar KRS 351.120(12) appeals from suspensions for alcohol and substance abuse policy violations of 09-MSRC-217 Robert B. Cornett, 09-MSRC-240 Kevin O. Fleming, 09-MSRC-260 James Allen Hall, 09-MSRC-261 David Maggard, 09-MSRC-262 George McBride, 09-MSRC-263 Herman D. Grubbs, 09-MSRC-265 Paul D. Durban, 09-MSRC-267 Randall Snyder, 09-MSRC-268 Jonathan Osborne, 09-MSRC-271 Burns J. Stephens and 09-MSRC-272 David M. Harris were called in turn. Each Petitioner appeared and requested a **Settlement Agreement** to resolve the allegations. Commissioner Donan made a motion to **grant**, each of their settlements which were seconded as appropriate by Commissioner Sanders. The motions carried unanimously, and were so Ordered. Chair Childers signed the Orders.

- 09-MSRC-241 Scott E. Kiser and 09-MSRC-242 Gregory Stidham were set for a Show Cause and did not appear, participate or defend upon the call of the hearing and did not request a continuance or other disposition prior to the hearing. Therefore a motion for an Order to **Revoke** their certifications for not less than one year was made by OMSL. That motion was seconded appropriately. The motion carried unanimously, and was so Ordered. Chair Childers signed the Orders.
- 07-MSRC-243 Jared Stanley and 09-MSRC-270 Nathan F. Smith were called and OMSL requested a **continuance**. The motion for Continuance was made and was seconded appropriately. Chair Childers signed the Orders.
- 09-MSRC-269 Jack A. Brock was called. At the call of the hearing the Petitioner presented negative hair follicle test for the drug alleged to be the basis for his suspension for all relevant times. OMSL had no evidence to the contrary. Thus informed the Commission **sustained the appeals** and Ordered immediate **reinstatement** of his certificates. The motion to accept that motion was made and was seconded appropriately. Chair Childers signed the Order.

The 11:00 a.m. Docket for KRS 351.120(12) workplace alcohol and substance abuse suspensions that were not appealed – “simple” revocations:

- The Commission called and then granted the motions by OMSL for **revocation** in the following procedurally similar cases. No one appeared on behalf of any Respondent miner and no Respondent appeared despite notice by certified mail with a return as to each; 09-MSRC-255 Ponder Fannin, Jr. 09-MSRC-256 Clarence J. Deaton, 09-MSRC-257 Norman K. Collins and 09-MSRC-258 Wilk M. Brock. Commissioner Donan made a motion to **grant**, each of the OMSL Motion for Revocations which were seconded by Commissioner Sanders. The motions carried unanimously, and were so Ordered. Chair Childers signed the Orders.

The 11:00 a.m. Docket for Motions to Reconsider:

- The Commission called 08-MSRC-148 **Michael Weir** who requested reconsideration from a permanent revocation. He requested an amended **settlement agreement** to enhance and extend testing. So moved Sanders and this was seconded by Commissioner Donan. The motion carried unanimously, and was so Ordered.
- The Commission called 09-MSRC-132 **Johnny Brown** who requested credit for time served in suspension during an administrative delay. He requested

an amended **settlement agreement**. So moved Sanders and this was seconded by Commissioner Donan. The motion carried unanimously, and was so Ordered.

- The Commission called 09-MSRC-218 **Hobert Middleton** who requested starting time served in suspension earlier than originally negotiated. He requested an amended **settlement agreement**. So moved Sanders and this was seconded by Commissioner Donan. The motion carried unanimously, and was so Ordered.
- The Commission then called 08-MSRC-233 **Timothy Michael Bailey**, who alleges **incarceration**, 09-MSRC-109 **Billy Joe Whitehead**, from one year revocation also alleges **incarceration**, and 09-MSRC-187 **Marty Byron Lynch**, alleging failure of delivery due to mistaken identity in turn. Each failed to meet his burden of persuasion and the Commission subsequently **denied** their reconsideration. So moved Sanders and this was seconded by Commissioner Donan. The motion carried unanimously, and was so Ordered.

11:00 a.m. Appeal of Penalty Assessment

None submitted for this meeting.

The 11:00 a.m. Docket for “traditional” type cases:

- The Commission called 09-MSRC-040 Francis Lester & Dotson for a **hearing** for Lester and Watson who appeared pro se and OMSL was represented by Hon. Patrick. The hearing was held with a decision to be entered within the regulatory time limit.

Petitions for an Order filed by OMSL in roof control cases:

None submitted for this meeting.

The 1:00 p.m. Docket for “traditional” type cases:

- 09-MSRC-070 Andrew S. Brown was called for a **hearing**, so that the hearing could conclude at this meeting by obtaining the testimony of a settling party, Boyd. The hearing was held with a decision to be entered within the regulatory time limit.

Old Business

❑ **Ratification of Final Order:**

07-MSRC-100 Hendrickson Equipment & James Hylton

❑ **Administrative Hearings Update;**

The Commission discussed briefly the continuing high number of cases set for the next meeting on Thursday January 14, 2010, and the possibility of one or more traditional type hearings.

❑ **Status Report & Abeyances;**

08-MSRC-124 **Cyfers & Williamson** status report filed timely, Federal Case remains pending, **continued to May 11, 2009** to allow resolution of MSHA 110 (c) investigation.

❑ **Appeals**

- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 05-MSRC-004 **Simon Ratliff**, and was informed the matter has been **submitted** for a ruling.
- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 07-MSRC-088 **Jerry J. Maggard**, et al. Hon. Smock, counsel for OMSL stated the matter has been **submitted** for a ruling.

New Business

❑ **Office & Administrative;**

- ❑ The General Counsel advised that the **mileage** is now to forty one (41) cents per mile.

❑ **Training**

- **Required Hearing Officer Training:** Next training is in 2010.

- ❑ **Executive Session:** The Commission adjourned to conduct an Executive session to discuss the motions & settlements in the cases as above and then reconvened to issue its determinations.

□ **Probable Cause Determinations**

- *None submitted for this meeting*

□ **Settlement Agreements**

The Settlement Agreements were managed as indicated above in the Motions and suspensions sections.

- **The Time Memo and Travel Vouchers** were signed and submitted for payment by the General Counsel.
- **NEXT MEETING:** The Commissioners acknowledged that MSRC is regularly scheduled for a regular two day meeting on Starting on **Thursday January 14, 2010.**
- **Adjournment:** Commissioner Donan made a motion to adjourn, which was seconded by Commissioner Sanders. The motion carried unanimously, and was so Ordered.

The next meeting of the Mine Safety Review Commission will be held on Thursday January 14, 2010. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:



Chair Hon. Joe F. Childers
Mine Safety Review Commission

1/14/10

Date