

COMMONWEALTH OF KENTUCKY  
MINE SAFETY REVIEW COMMISSION  
ADMINISTRATIVE ACTION NO. **14-MSRC-086**

**JAMES M. RUSSELL**

**PETITIONER**

**FINAL ORDER**

COMMONWEALTH OF KENTUCKY,  
DIVISION OF MINE SAFETY

**RESPONDENT**

\* \* \* \* \*

This matter having come before the Mine Safety Review Commission (Commission) on the appeal of Russell (the Petitioner and Certificate Holder), and after a hearing wherein exhibits were tendered and witnesses called and cross examined by both Parties and questioned by the Commission, and the members of the Commission being sufficiently advised,

IT IS HEREBY **ORDERED** as follows:

1. The Commission hereby finds that more likely than not, Petitioner violated his employer's substance abuse policy, which was reported to the Respondent and resulted in the suspension of his underground miner certificate on May 28, 2014. Therefore, Petitioner's actions constituted a violation of KRS 351.120.
2. The Petitioner's mining certificate(s) shall be placed in probation for a period of one (1) year, subject to the conditions set forth in Paragraphs 3 - 7 and 8, below.

3. During the suspension and probationary periods set forth in Paragraph herein, Petitioner and Certificate Holder shall comply with all state and federal mine safety laws and regulations, including the terms of this Settlement Agreement. The willful violation by Petitioner and Certificate Holder of any of said laws or regulations, or the terms of this settlement agreement, may result in DMS filing a motion with the Mine Safety Review Commission to revoke his certificates for the remainder of the probationary period or to revoke them.
4. Petitioner and Certificate Holder shall submit to drug testing **twice (2x) per month** every month during the **first six (6) months** of the suspension and probationary period set forth above, and **once every thirty (30) days during the remainder of the probationary period.** The twice-monthly tests shall be taken on or before the 15th day of each month and on or before the last day of each month and the reports of results made as soon as possible. The Petitioner **shall utilize the drug testing program offered by DMS** through its examination system, at his own expense.
5. Petitioner and Certificate Holder, unless satisfactorily completed and submitted prior to the execution of this Order shall undergo an **evaluation** by a certified addiction counselor or other professional familiar with addictive behaviors, to determine if attendance in rehabilitation, counseling or support group programs is warranted

prior to the reinstatement of his certificates. The written determination of said professional shall be submitted to DMS. If the professional determination concludes that the Petitioner should enroll in rehabilitation, counseling or support group programs, he shall do so and shall continue his participation in same during the probationary period *or* until such time as his counselors certify to DMS that he has completed the treatment and counseling.

6. During the probationary period set out herein, if the Petitioner is reported by any employer for violating the employer's drug- and alcohol-free policy pursuant to KRS 351.170(2), the Petitioner's mining certifications shall be immediately suspended until such time as a Motion for Sanctions can be filed by the DMS and ruled upon by the MSRC.
7. Petitioner and Certificate Holder shall not be eligible for certification in any other specialties during the probationary period.
8. Petitioner and Certificate Holder shall remain suspended until submittal of his initial drug test and evaluation and then shall be on probation as provided herein.
9. This is a "subsequent" offense pursuant to 805 KAR 8:010, Section 1(13).

10. 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 14<sup>TH</sup> day of August 2014.



HON. WILLIAM D. DONAN CHAIR  
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this 20<sup>th</sup> day of August 2014:

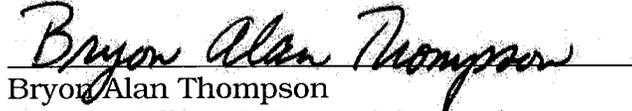
JAMES M. RUSSELL  
462 EAST BROADWAY STREET  
MADISONVILLE, KY 42431

And by messenger mail to:

Office of General Counsel  
#2 Hudson Hollow  
Frankfort, Kentucky 40601  
(502) 564-2356  
FAX: (502) 564-9212

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