

COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
FILE NO. **12-MSRC-174**

DAVID WAYNE ASHLEY

PETITIONER

FINAL ORDER

COMMONWEALTH OF KENTUCKY,
OFFICE OF MINE SAFETY AND LICENSING

RESPONDENT

* * * * *

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Respondent, Office of Mine Safety and Licensing (OMSL) and Petitioner as Certificate holder and the members of the Mine Safety Review Commission (Commission) having reviewed the Settlement Agreement filed on or before *December 13*, 2012 and of record in the matter herein, and the Commissioners being sufficiently advised,

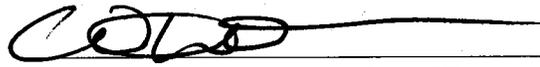
IT IS HEREBY **ORDERED** as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. Any formal hearing and pre-hearing conference scheduled and other pre-hearing orders 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. The obligation for compliance with the **submittal of drug test** results to OMSL for reinstatement and other terms if provided in the Settlement Agreement is the **sole responsibility of the Certificate holder** and shall not be delegated to any other person. The Certificate holder **shall submit drug tests** as agreed **whether or not he is employed** in coal mining or otherwise. Failure of or refusal to submit drug testing or other terms in the Settlement Agreement may result in permanent revocation of all certificates by the Commission upon a Motion for Sanctions by OMSL.
5. 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 Certificate holder not arising from the factual basis of the original violation and resolved herein.
6. 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 the Certificate holder, resulting in an adjudication of guilt by the Commission, shall be deemed “subsequent offenses” as defined by 805 KAR 8:010, Section 1(13);

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 *December* 2012.


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 19th day of ~~November~~ *December* 2012:

David Wayne Ashley
P. O. Box 1702
Hindman, KY 41822

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

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

**COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
Action No. 12-MSRC-174**

DAVID WAYNE ASHLEY

PETITIONER

v.

SETTLEMENT AGREEMENT

**KENTUCKY OFFICE OF MINE
SAFETY & LICENSING**

RESPONDENT

* * * * *

Come the parties, Petitioner David Wayne Ashley (Ashley), *pro se*, and the Respondent, the Kentucky Office of Mine Safety and Licensing (OMSL), by counsel, 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, and the hearing (as it pertains to him) that was scheduled for November 8, 2012, the Petitioner hereby admits that he violated his employer's substance abuse policy, which was reported to the Respondent and resulted in the suspension of his underground miner and gas detection certificates on September 25, 2012. His actions constituted a violation of KRS 351.120. Therefore, Ashley hereby agrees to the following:

1. The suspension of his underground miner and gas detection certificates for a period of thirty (30) days after entry of the Final Order reinstating his certificates is entered by the MSRC.

2. The Petitioner's underground miner and gas detection certificates shall be placed in probation for a period of one (1) year after the suspension period ends, subject to the conditions set forth in Paragraphs 3, 4, 5, 6 and 7, below.

3. During the probationary periods set forth in Paragraph No. 2 above, Ashley shall comply with all state and federal mine safety laws and regulations, including the terms of this Settlement Agreement. The willful violation by Ashley of any of said laws or regulations, or the terms of this settlement agreement, 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.

4. Ashley shall submit to a fourteen panel drug testing (that includes suboxone, synthetic marijuana and bath salts)) twice per month for the first four (4) months of the suspension/probationary periods and once every thirty (30) days for the duration of the probationary period as set forth in Paragraph 3, above. 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. In all instances, it is the Petitioner's responsibility to have the results of all tests reported to OMSL, at his own expense, through his employer's program or a treatment program. If necessary, the Petitioner can utilize the drug testing program offered by OMSL through its examination system, at his own expense.

5. Ashley understands and agrees that the report of any positive drug test results shall be cause for the revocation of his certificates for a period not less than three (3) years.

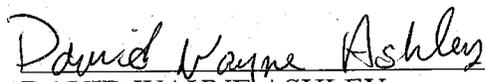
6. Ashley further understands and agrees that he shall not be eligible for certification in any other specialties during the probationary period.

7. Ashley understands and agrees that failure to comply with the terms of this Settlement Agreement may result in the revocation of his certifications for not less than three (3) years.

Ashley further 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).

Ashley understands and agrees that he has had the opportunity to retain an attorney to represent him in this matter, but that he has chosen to represent himself. Ashley 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.

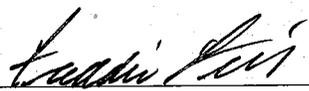
OMSL and Ashley acknowledge and agree that there are no further promises, inducements, representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.



DAVID WAYNE ASHLEY
P. O. Box 1702
Hindman, Kentucky 41822

12-13-12

DATE



FREDDIE LEWIS Executive Director
KY Office of Mine Safety & Licensing
P.O. Box 2244
Frankfort, Kentucky 40602

12-17-12

DATE



LANCE HUFFMAN
Office of General Counsel
Office of Mine Safety & Licensing
2 Hudson Hollow
Frankfort, Kentucky 40601
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Facsimile: 502/564-9212