

COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. **12-MSRC-100**

KEITH D. BERRY

PETITIONER

FINAL ORDER

COMMONWEALTH OF KENTUCKY,
OFFICE OF MINE SAFETY AND LICENSING

RESPONDENT

* * * * *

This matter having come before the Commission for a hearing at the request of the Petitioner, Keith D. Berry and after taking the testimony of witnesses and considering the evidence as presented and the Commissioners being sufficiently advised,

The Commission determines that more likely than not the suspension was validly issued and therefore ORDERS the entry of the attached Settlement Agreement incorporated herein fully as part of this Final Order.

Entered this the 12TH day of July 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 18th day of July 2012:

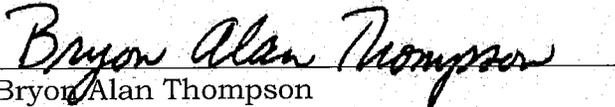
KEITH D. BERRY
3100 COUNTRYSIDE DRIVE
SEBREE, KY 42455

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

COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
Action No. 12-MSRC-100

KEITH D. BERRY

PETITIONER

v.

SETTLEMENT AGREEMENT

KENTUCKY OFFICE OF MINE
SAFETY & LICENSING

RESPONDENT

Come the parties, Petitioner Keith D. Berry (Berry), *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 July 12, 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 surface miner and MET certificates on May 23, 2012. His actions constituted a violation of KRS 351.120. Therefore, Berry hereby agrees to the following:

M.R.
KDB

1. The suspension of his surface miner certificates until such time as his application for restoration of his certificate is accepted by the Kentucky Mining Board (Board), in accordance with KRS 351.120(13), but in no event shall the suspension end sooner than ~~sixty~~ ^{thirty} ~~(60)~~ ⁽³⁰⁾ days after the next scheduled meeting of the Board.

M.R.
KDB -

thirty
M.R.
F.D.B.

(30)
~~(60)~~

2. The Petitioner's surface miner certificates shall be suspended for a period of ~~sixty~~ ^{thirty} days after reinstatement by the Board. Thereafter, said certificates shall be placed in probation for a period of one (1) year, subject to the conditions set forth in Paragraphs 3, 4, 5, 6, 7 and 8, below.

3. The Petitioner's MET shall remain suspended for the duration of the suspension/probationary periods.

4. During the probationary periods set forth in Paragraph No. 2 above, Berry shall comply with all state and federal mine safety laws and regulations, including the terms of this Settlement Agreement. The willful violation by Berry 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 permanently revoke them.

5. Berry shall submit to a fourteen (14) 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 thereafter for the duration of the probationary period set forth in Paragraph Nos. 1 and 2, 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.

6. Berry understands and agrees that he 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 OMSL. If the professional determination concludes that the Petitioner should enroll in rehabilitation, counseling or support group programs, he shall do so prior to the reinstatement and shall continue his participation in same during the probationary period or until such time as his counselors certify to OMSL that he has completed the treatment and counseling.

7. Berry understands and agrees that the report of any positive drug test results shall be cause for the permanent revocation of his certificates. 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 parties agree that the Petitioner's mining certifications will be immediately suspended until such time as a Motion for Sanctions can be filed by the OMSL and ruled upon by the MSRC.

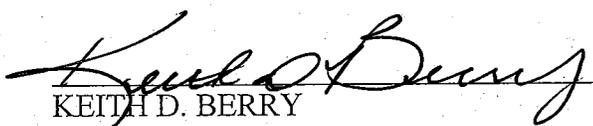
8. Berry further understands and agrees that he shall not be eligible for certification in any other specialties during the probationary period.

9. Berry understands and agrees that in the event that he fails to provide the documents (letter to Mining Board, negative drug screen and drug evaluation) necessary for reinstatement before the Kentucky Mining Board within ninety (90) days of entry of the Final Order upholding the Settlement Agreement, his certificates will be automatically revoked for a period of not less than one (1) year without the necessity of further Motion or action by the OMSL.

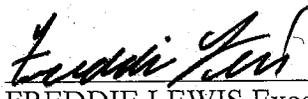
Berry further agrees that this Settlement Agreement and any final order issued herein by the Mine Safety Review Commission will be considered by the Commission to constitute a "first offense", as that term is defined at 805 KAR 8:010, Section 1(5).

Berry 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.

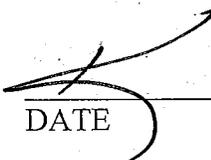
OMSL and Berry acknowledge and agree that there are no further promises, inducements, representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.

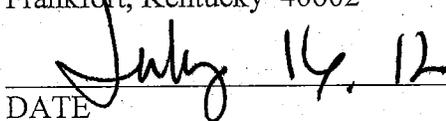


KEITH D. BERRY
3100 Countryside Drive
Sebree, Kentucky 42455



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

 7-12-12
DATE

 July 14, 12
DATE



MARIA T. RUSSELL
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Facsimile: 502/564-9212