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GOVERNOR



LEONARD K. PETERS  
SECRETARY

COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION  
132 BRIGHTON PARK BLVD.  
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COMMISSIONERS

WILLIAM D. DONAN, CHAIR  
STEPHEN A. SANDERS  
J. DUNCAN PITCHFORD

BRYON ALAN THOMPSON  
GENERAL COUNSEL

**MINE SAFETY REVIEW COMMISSION  
MINUTES**

MINUTES OF THE REGULAR MEETING OF FEBRUARY 9, 2012: 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:** The Chair and Commissioner William D. Donan, Commissioner Stephen A. Sanders and Commissioner J. Duncan Pitchford 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 Donan made a motion that a quorum was present, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- **Welcome Guests:** Hon. Mike Haines, Energy and Environment Cabinet General Counsel was present and also staff attorneys for OGC; Smock, Thompson, Russell 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 **1/12/12** were discussed. Commissioner Donan made a motion for approval, which was seconded. The motion carried unanimously, and was ratified by the Chair.

□ **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:**

- 10-MSRC-014 Jeremy McCoy, 10-MSRC-161 Gary Seth Wallace, 10-MSRC-164 Neil Sammons, 10-MSRC-195 Michael Pollis, and 10-MSRC-196 Arlin L. Vanover were called and did not appear or participate. OMSL by counsel moved for **permanent revocation** as a sanction for failing to comply with the terms of their probation as agreed in a previous settlement agreement adopted as a Final Order. A motion for approval was made and was seconded for each. The motions carried unanimously, and were ratified by the Chair.
- 11-MSRC-083 James Potter was called and he appeared and requested a modification to his prior settlement to expand the testing period to compensate for missing tests. OMSL agreed to accept the terms of the **amended settlement** and this was so moved. A motion for approval was made and was seconded for each. The motions carried unanimously, and were ratified by the Chair.
- 10-MSRC-040 Brian Watts was called and the Commission was informed that he was **deceased**. The Commission determined that **dismissal** of his appeal was appropriate. A motion for approval was made and was seconded for each. The motions carried unanimously, and were ratified by the Chair.
- 10-MSRC-042 Brenda Barger was called and no one appeared. OMSL informed the Commission that service was not complete and moved for a **continuance**. A motion for approval was made and was seconded for each. The motions carried unanimously, and were ratified by the Chair.

□ **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 11-MSRC-287 Jeffery S. Jones, 11-MSRC-318 Brandon S. Lovell, 12-MSRC-006 Bryant Rose, 12-MSRC-011 Dustin K. Hall and 11-MSRC-318 Brandon S. Lovell who were each called in turn. Each Petitioner appeared and requested a **Settlement Agreement** to resolve the allegations. A motion was made to **grant**, each of their settlements which were seconded as appropriate. The motions carried unanimously, and were ratified by the Chair.

- 11-MSRC-268 Aaron D. Tucker and 11-MSRC-291 Matthew Blevins, were called and did not appear. OMSL moved for **revocation** for not less than one year. A motion was made to **grant**, which was seconded as appropriate. The motions carried unanimously, and were ratified by the Chair.
- 11-MSRC-276 John Travis Herald, 11-MSRC-277 Joshua Slone, 11-MSRC-283 Christopher Short Initial Denial, 11-MSRC-284 Ernest Moore Initial Denial, 11-MSRC-285 Dwaine Harris, 11-MSRC-286 Billy Akers Initial Denial, 12-MSRC-001 Greg Coley, 12-MSRC-004 Dwight J. Frazier and 12-MSRC-005 Jarrod Carroll were each called and did not appear. OMSL moved to **Show Cause**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-289 Bryan K. Harlow, 11-MSRC-290 Stevie D. Fuller were called and did not appear. OMSL moved to **continue**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-317 Jeffery Dunning, 12-MSRC-002 Joshua Dale Muncy, 12-MSRC-003 William Mitch Back and 12-MSRC-007 Jake Lucas were each called in turn. Each requested a hearing and presented evidence, testimony and documentation that demonstrated that more likely than not the determination of suspension was in error. They moved to **sustain** their appeals. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

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

- 11-MSRC-307 Jamie Owsley was called and he appeared. He requested a **settlement** agreement. OMSL so moved. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

**The 11:00 a.m. Docket for Reciprocity actions regarding Virginia Drug Sanctions:**

- None submitted for this meeting.

**The 11:00 a.m. Docket for Petition for Roof Control Violation Orders:**

- None submitted for this meeting.

**The 11:00 a.m. Docket for Motions to Modify prior Orders:**

- 11-MSRC-216 Kermit M. Clemons was called and presented a valid prescription relevant to the time period of his suspension. He moved to **sustain his appeal** based upon this evidence and his prior testimony. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-222 James L. Spencer was called and demonstrated that he was in rehabilitation and could not attend the hearing and moved to rescind the prior order and to enter a **settlement agreement**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 08-MSRC-148 Michael Weir and 08-MSRC-221 Michael Sexton were each granted an opportunity to appear and present further evidence and testimony but did not. **No action** was taken.

**11:00 a.m. Appeal of Penalty Assessment**

*None submitted for this meeting.*

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

- 10-MSRC-207 Leeco, Inc. was called. OMSL tendered a **settlement agreement**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC- 168 Jordan D. Wilkins was called OMSL moved for a **continuance** to September 6 to allow **completion of his rehabilitation**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

**Old Business**

□ **Ratification of Final Order:**

*None submitted for this meeting.*

□ **Administrative Hearings Update;**

The Commission discussed briefly the continuing high number of cases set for the next meeting and the possibility of one or more traditional type hearings.

□ **Status Report & Abeyances;**

*None submitted for this meeting.*

□ **Appeals**

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** decreased to forty five (45) cents per mile.

□ **Training**

- **Required Hearing Officer Training:** Next required Hearing Officer Training is in **June 22, 2012** at the KY History Center. **Initial Hearing Officer training** will be in **March 23 2012**.
- **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**

- 12-MSRC-008 David Blankenship, 12-MSRC-009 Marsee, Neace, Magnuson & Wyss and 12-MSRC-010 Cole, Smith & Pauley were each called for a determination of **probable cause**. After review the Commission determined that probable cause was found. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

□ **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 March 8, 2012.**
- **Adjournment:** Commissioner and Chair 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 March 8, 2012. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:

  
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Hon. William D. Donan Chair  
Mine Safety Review Commission

March 8, 2012  
Date