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Judge finds Powder River Basin mining company discriminated against employee *Orders Cordero Mining to reinstate miner unlawfully discharged for safety complaints*

ARLINGTON, Va. – The U.S. Department of Labor’s Mine Safety and Health Administration today announced that an administrative law judge with the Federal Mine Safety and Health Review Commission has ordered Cordero Mining LLC of Gillette, Wyo., to pay a \$40,000 civil penalty as well as reinstate an employee to her former position, provide compensation for lost wages and remove personnel files referencing the unlawful discharge.

On May 4, 2010, Cindy L. Clapp filed a complaint with MSHA against Cordero, alleging that the coal mining company had terminated her employment at Cordero Mine in Campbell County in retaliation for her repeated safety complaints. Clapp claimed that the management’s lack of concern over safety complaints raised by mine workers and her unlawful discharge had a chilling effect on the willingness of other miners to raise safety issues at the mine.

MSHA sought a finding from the commission that Cordero Mining had unlawfully discriminated against an employee in violation of Section 105(c) of the Federal Mine Safety and Health Act of 1977, which states that miners, their representatives and applicants for employment are protected from retaliation for engaging in safety and/or health-related activities, such as identifying hazards, asking for MSHA inspections or refusing to engage in an unsafe act.

Administrative Law Judge Thomas P. McCarthy concluded that Clapp, a shovel operator with 28 years of experience as a miner, had engaged in protected activity under the Mine Act, and Cordero took adverse action against her in retaliation for her complaints.

In the Dec. 5, 2011, decision, the administrative law judge ordered Cordero to cease and desist from discharging or otherwise discriminating against Clapp or any other miner because she or he engage in protected activity, and from interfering with miners who exercise the rights guaranteed by the Mine Act. Additionally, he ordered the company to take “affirmative action necessary to effectuate the policies of the Mine Act” within 14 days of the order and post a copy of the legal decision. The \$40,000 penalty is twice the amount originally sought by the Labor Department.

“Every miner has the right to identify hazardous conditions and refuse unsafe work without fear of discrimination or retaliation,” said Joseph A. Main, assistant secretary of labor for mine safety and health. “The Mine Act allows miners to exercise this right without fear of being fired, demoted, harassed, transferred, refused employment or suffering any loss of wages.”

Cordero has appealed McCarthy’s decision to the review commission and requested that it stay the enforcement of the order during the appeal.

“A Guide to Miners’ Rights and Responsibilities Under the Federal Mine Safety and Health Act of 1977” is available on MSHA’s website at <http://www.msha.gov/S&HINFO/minersrights/minersrights.asp>.

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