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Decision in miner discrimination case upheld by federal appeals court *MSHA's assistant secretary cites decision as victory for miners' rights*

ARLINGTON, Va. – The U.S. Court of Appeals for the 10th Circuit has rejected an appeal by Cordero Mining LLC of Gillette, Wyo., in a worker discrimination case and affirmed a December 2011 decision by an administrative law judge of the Federal Mine Safety and Health Review Commission. In that decision, the judge ordered Cordero Mining to reinstate a discharged employee to her former position, make her whole for lost wages and benefits, remove from her personnel files references to the unlawful discharge and pay a civil penalty of \$40,000.

In May 2010, Cindy L. Clapp, a shovel operator with 28 years of experience as a miner, filed a complaint with the U.S. Department of Labor's Mine Safety and Health Commission alleging that Cordero terminated her employment in retaliation for her repeated safety complaints. Clapp claimed that 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 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, miners' representatives and applicants for employment are protected from retaliation for engaging in safety and/or health-related activities, such as identifying hazards or asking for MSHA inspections.

In December 2011, an administrative law judge of the commission concluded that Clapp had engaged in protected activities under the Mine Act, and Cordero had discharged her in retaliation for her activities. Cordero then filed an appeal with the commission, which declined to review the judge's decision. Cordero filed an appeal with the U.S. Court of Appeals for the 10th Circuit.

In its decision, the appeals court found substantial evidence to support the administrative law judge's finding of discrimination and his decision to award full back pay. In addition, the court found that the \$40,000 penalty was not excessive or an abuse of discretion.

Cordero has until Dec. 31, 2012, to petition the court for a rehearing.

“This decision represents a resounding victory for miners and their right to identify hazardous conditions that imperil themselves and their fellow miners without fear of reprisal,” said Joseph A. Main, assistant secretary of labor for mine safety and health.

During fiscal year 2012, MSHA filed 39 requests – more than in any other year – with the commission for temporary reinstatements on behalf of miners who submitted complaints of discrimination in the form of a suspension, layoff, discharge or other adverse action.

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