

**BEFORE THE BOARD OF APPEALS
STATE OF WEST VIRGINIA**

IN THE MATTER OF:

**WEST VIRGINIA OFFICE OF
MINERS' HEALTH, SAFETY
AND TRAINING,**

Petitioner,

v.

DOCKET NO.: 12-DEC-3

JEREMY L. BURGHDUFF.

Respondent.

SETTLEMENT AGREEMENT AND DISMISSAL ORDER

Now comes the West Virginia Office of Miners' Health, Safety and Training (OMHST) by counsel, Barry L. Koerber, Assistant Attorney General, and Jeremy L. Burghduff (Mr. Burghduff), by counsel, Andrew G. Fusco, in the above referenced matter and enters into the following agreement:

As to Docket Number 12-DEC-3, Charges 1 and 2, OMHST and Mr. Burghduff agree to the following terms:

Mr. Burghduff shall voluntarily surrender his assistant underground mine foreman certificate number 1759-A to OMHST. Mr. Burghduff shall retain his underground miner's certificate number 11178. For a three (3) year period of time from the date this Settlement Agreement and Dismissal Order is entered by the Board, Mr. Burghduff shall not possess a West Virginia issued underground mine foreman card, assistant underground mine foreman card, surface mine foreman card, assistant surface mine foreman card, belt examiner card, or a surface construction supervisor card or work in any mine in a capacity that would

require such a card. At the end of the three (3) year period of time, Mr. Burghduff shall be eligible to submit an application to OMHST for an assistant underground mine foreman certificate pursuant to W. Va. Code § 22A-2-7(b); an assistant surface mine foreman certificate pursuant to 56 CSR § 3-25.1(b); or a belt examiner certificate pursuant to W. Va. Code § 22A-2-39(I). For purposes of determining whether Mr. Burghduff has the required work experience to qualify as an assistant underground mine foreman, assistant surface mine foreman, or belt examiner, OMHST shall only consider work experience and/or education obtained after the date this Settlement Agreement and Dismissal Order is entered. So long as Mr. Burghduff meets the, then in effect, qualifications of the certification sought and passes the required test, Mr. Burghduff shall be entitled to obtain that certification. Mr. Burghduff shall be eligible to submit an application and test for an underground mine foreman certificate after obtaining five (5) years of work experience after the entry of this Settlement Agreement and Dismissal Order.

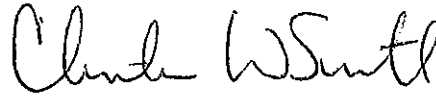
Nothing in this Settlement Agreement and Dismissal Order shall be construed to prohibit Mr. Burghduff from applying for an apprentice electrician certification, shot-firer certification, or surface miner certification, at any time, so long as he meets the qualifications for such certification and passes the test.

This Agreement is entered into to settle this matter without further litigation. Nothing in this Agreement shall be deemed an admission by Mr. Burghduff, of the allegations contained within the Petition for Withdrawal of Certification. The parties understand and acknowledge

that the legal standards and procedures involved in these administrative proceedings are not necessarily the same as those involved in civil or criminal litigation, and agree that this Agreement is made solely for the purpose of settling this administrative matter amicably, and is not intended to be used in any judicial or administrative forum whatsoever, except for proceedings directly brought by OMHST.

The Board hereby **ADOPTS** and **ACCEPTS** the agreements of the parties and hereby further **ORDERS** that this matter be dismissed and stricken from the docket.

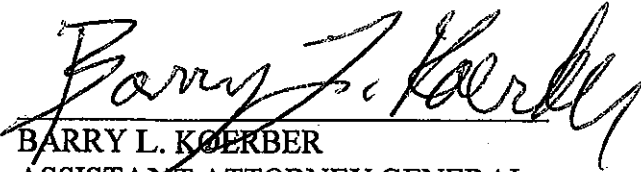
ENTERED THIS 9th DAY OF April, 2013.



Clinton W. Smith, Chairman
Board of Appeals

PREPARED AND AGREED TO BY:

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SEEN AND AGREED TO BY:



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