

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

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

**Petitioner,**

v.

**DOCKET NO.: 12-DEC-4**

**THOMAS G. CARPENTER**

**Respondent.**

**FINAL ORDER**

On May 24, 2012, came the West Virginia Office of Miners' Health, Safety and Training (OMHST), by counsel, Barry L. Koerber, Assistant Attorney General, and came Thomas G. Carpenter, pro se, for a hearing on OMHST's Petition for Decertification. All Board members were present.

The first matter addressed was OMHST's Motion to Amend the Charge. In that Motion, OMHST sought to amend the charge to correctly identify January 5, 2012 as the date of the accident rather than December 5, 2011. Mr. Carpenter had no objection to amending the charge to reflect the proper date of the accident and, therefore, the Board **GRANTS** OMHST's Motion to Amend.

The Board then informed Mr. Carpenter of his constitutional right to a hearing, to confront witnesses and to be represented by an attorney. After finding that Mr. Carpenter was of sound mind, fully understood his constitutional rights, and understood the potential consequences that might occur if he chose to represent himself, the Board proceeded with the hearing.

## **FINDINGS OF FACT**

1. The Board finds that Mr. Carpenter admits all the factual allegations contained in the Charge, as amended.
2. The Board finds that although Mr. Carpenter admits the factual allegations of the Charge, as amended, he denies that his actions warrant the permanent revocation of his mine foreman certificate.
3. The Board finds that Mr. Carpenter has no prior history of violating West Virginia mine safety laws.
4. The Board finds that Mr. Carpenter possesses Assistant Mine Foreman Certificate No. 2062-A.
5. The Board has taken into consideration the seriousness of the alleged misconduct and is unanimously of the opinion that what Mr. Carpenter did was incredibly dangerous and was an exercise of incredible poor judgment.
6. The Board has also taken into consideration that Mr. Carpenter's incredibly poor judgment resulted in significant injuries to himself and that alone would constitute a warning to himself and others working around him not to engage in that conduct.
7. However, the Board believes there is concern about Mr. Carpenter's judgment and his understanding of the law.

## **CONCLUSIONS OF LAW**

1. The Board concludes that the facts as alleged in the Charge, as amend, and that were admitted to by Mr. Carpenter, is a violation of 36 CSR § 16-4.2.

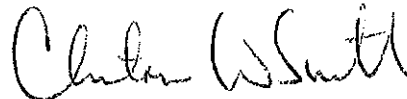
2. Therefore, the Board is of the unanimous opinion that Mr. Carpenter's Assistant Mine Foreman Certificate No. 2062-A is suspended, effective May 24, 2012, for a minimum of one (1) year.

3. In addition, before Mr. Carpenter's Assistant Mine Foreman Certificate No. 2062-A is reinstated, Mr. Carpenter must complete, at his own expense and initiative, a mine foreman training class and present the certificate of completion to OMHST. Until such time as Mr. Carpenter both serves the one (1) year suspension period and presents to OMHST a certificate showing the completion of the mine foreman training class, Mr. Carpenter's Certificate No. 2062-A shall remain suspended. Mr. Carpenter may complete the mine foreman training class at any time, but at a minimum the suspension period is one (1) year.

For all of the above stated reasons, the Board unanimously **ORDERS** that Mr. Carpenter's Assistant Mine Foreman Certificate No. 2062-A is suspended for, at a minimum, one (1) year. The Board further **ORDERS** that before Mr. Carpenter's Assistant Mine Foreman Certificate No. 2062-A is re-instated, Mr. Carpenter must complete a mine foreman training class, at his expense and initiative, and present to OMHST the certificate of completion. Until such time as Mr. Carpenter presents to OMHST the certificate of completion, Mr. Carpenter's Certificate No. 2062-A shall remain suspended, but in no event shall the suspension period be less than one (1) year.

The Board notes the objections of any party aggrieved by this Order.

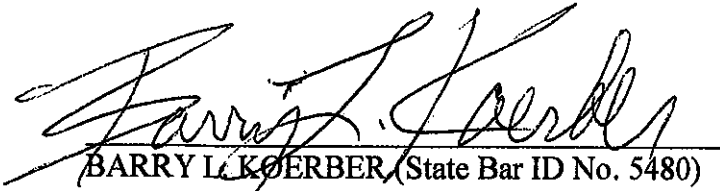
ENTERED THIS 28th DAY OF June, 2012.



CLINTON W. SMITH, CHAIRMAN  
West Virginia Board of Appeals

PREPARED BY:

DARRELL V. McGRAW, JR.  
ATTORNEY GENERAL

A handwritten signature in cursive script, appearing to read "Barry L. Koerber", is written over a horizontal line.

BARRY L. KOERBER (State Bar ID No. 5480)

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