

BEFORE THE BOARD OF APPEALS

OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING,

Petitioner,

v.

Docket No. 09-DEC-6

CHAD FERRELL,

Respondent.¹

SETTLEMENT AGREEMENT AND DISMISSAL ORDER

Now comes the West Virginia Office of Miners' Health, Safety and Training (Petitioner) by counsel, Elaine L. Skorich, Assistant Attorney General, and Chad Ferrell, by counsel, William Forbes, in the above captioned case and requests that this Board accept the following settlement agreement and dismiss these proceedings under the following terms:

1. Both the Petitioner and Respondent desire to settle the issues involved in this proceeding.
2. Respondent agrees to a voluntary permanent surrender of his Underground Apprentice Miner Certification #4-12006 and his Underground Coal Miner Certification #4-10299.
3. Respondent agrees never to seek any other certification issued by the Office of Miners' Health, Safety and Training in the State of West Virginia.
4. On or before March 12, 2010, Respondent shall surrender to Petitioner his cards for Underground Apprentice Miner Certification #4-12006 and his Underground Coal Miner Certification #4-10299.

¹Upon its own motion, the Board of Appeals hereby changes the styling of the instant case to that shown above.

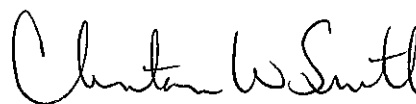
Petitioner also agrees that it shall take no further administrative, judicial or legal action against Respondent related to the events giving rise to this proceeding and Petitioner agrees to release Respondent from any further claims, demands or actions to impose any other penalties, liabilities or sanctions upon Respondent.

None of the foregoing pleadings, orders, agreements, statements, findings, and actions in this proceeding, if any, shall be deemed an admission of fault or liability by Respondent or an admission of a violation of federal or state health and safety law or regulations or an admission of the allegations contained within the Charges for Permanent Withdrawal of Certifications or amendments and/or revisions thereto. 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 other civil, criminal or administrative litigation and agree that the pleadings, orders, addenda, agreements, statements, stipulations, findings, and actions taken herein are made solely for the purpose of compromising and settling this administrative matter amicably, and are not intended to constitute evidence or an estoppel against Respondent or to be used in any judicial, administrative or criminal forum for any other purpose whatsoever except for proceedings instituted by Petitioner.

This agreement shall not be used outside these proceedings by anyone except the parties to this proceeding. This agreement and the mutual consideration recited herein is conditioned upon the mutual understanding that Respondent is making this settlement for administrative convenience and to avoid the time and expense of further litigation.

The Board hereby **ADOPTS** the agreements of the parties and hereby further **ORDERS** that the matters referenced herein be dismissed and stricken from the docket.


ENTERED THIS 30th DAY OF March, 2010




CLINTON W. SMITH, CHAIRMAN
Board of Appeals

PREPARED AND AGREED TO BY:

DARRELL V. MCGRAW, JR.
ATTORNEY GENERAL


Elaine L. Skorich, Assistant Attorney General
1615 Washington Street, East
Charleston, West Virginia 25311-2126
Attorney for OMHST

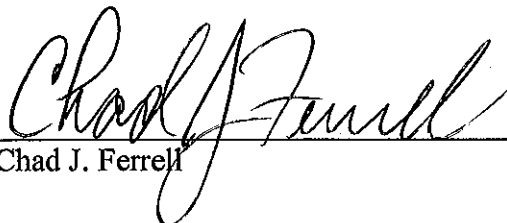
REVIEWED AND AGREED TO BY:


William C. Forbes, Esquire
28 Ohio Avenue
Charleston, WV 25302-2242
Attorney for Chad J. Ferrell

VERIFICATION

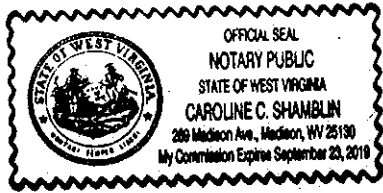
STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA,

I, Chad J. Ferrell, Respondent, hereby verify that the stipulations set forth in the above "Settlement Agreement and Dismissal Order" are true and correct; that I enter into said Agreement voluntarily; and that I have been represented by counsel during the settlement process.


Chad J. Ferrell

Taken, subscribed and sworn to before me, the undersigned notary in the aforesaid county and state this 16th day of March, 2010.

My Commission expires
9/23/19



Caroline C Shamblin
NOTARY PUBLIC

**BEFORE THE COAL MINE SAFETY BOARD OF APPEALS
STATE OF WEST VIRGINIA**

IN THE MATTER OF CHAD J. FERRELL;

Charged party,


DOCKET NO.: 09-DEC-6

ORDER

On the 27th day of July, 2009, came Ronald L. Wooten, Director of the Office of Miners' Health, Safety and Training, by counsel, Elaine L. Skorich, and filed its Petition for Withdrawal of Certifications of Chad J Ferrell, to act as a coal miner under any certificate, including underground apprentice miner 4-12006 and underground coal miner 4-10299 until the conclusion of the proceedings.

The Board having considered the same hereby finds probable cause to exist for withdrawal of said certifications of Chad J. Ferrell, only upon proper application to the Board.

THEREFORE, it is hereby ORDERED that a hearing on the merits will be set at a future time and all parties will be notified officially of the hearing.



CLINTON W. SMITH, CHAIRMAN
MINE BOARD OF APPEALS

Dated this the 14th day of September, 2009.

**BEFORE THE COAL MINE SAFETY BOARD OF APPEALS
STATE OF WEST VIRGINIA**

IN THE MATTER OF:

CHAD J. FERRELL,

DOCKET NO.: 09-DEC- 6

Charged Party.

CHARGES FOR PERMANENT WITHDRAWAL OF CERTIFICATIONS

Comes now Ronald L. Wooten, Director of the West Virginia Office of Miners' Health, Safety and Training, hereinafter Petitioner, by counsel, Elaine L. Skorich, Assistant Attorney General, and submits to this administrative tribunal the following charges for permanent withdrawal of all mine certificates issued to Chad J. Ferrell (hereinafter "Respondent"), including certificates numbered 4-12006 (Underground Apprentice Miner) and 4-10299 (Underground Coal Miner), or to act as a miner under any certification issued or administered by the West Virginia Office of Miners' Health, Safety and Training. This charge is brought pursuant to West Virginia Code § 22A-1-31.

CHARGE 1

Respondent was issued Underground Apprentice Miner #4-12006 on February 23, 2001, and Underground Coal Miner Card #4-10299 on August 27, 2001. (See Exhibit A attached hereto.) Petitioner has never issued Respondent a valid Underground Mine Foreman Card. At all times relevant herein, Respondent was employed at the Brooks Run Mining Company's Poplar Ridge No. 1 Mine near Cowen, Webster County, West Virginia.

On June 5, 2009, OMHST Safety Instructor, Terry Jude, emailed Brooks Run Safety Instructor, Ken Purdue, concerning the status of the mine foreman continuing education training at the Brooks Run operations. Mr. Purdue emailed the class rosters of the foreman who had

received their training to Mr. Jude in OMHST's Danville Office and mailed the originals to OMHST's Oak Hill Office. (See Exhibit B attached hereto.)

While entering the foreman certification numbers into the database, Mr. Jude discovered that there were three certification numbers that were not in the system. Accordingly, Mr. Jude emailed Mr. Perdue the names of those three foremen, one of which was Respondent. Mr. Perdue responded that two of the foremen's social security numbers were transmitted incorrectly and that he thought that the information about Respondent was correct. Mr. Jude emailed Mr. Perdue and explained that Respondent's social security number was correct but the foreman certification number was listed for another person. Mr. Jude also directed Mr. Perdue to have Respondent contact Mr. Jude's office in order to research the files to find Respondent's original foreman application.

Mr. Perdue then informed OMHST's Oak Hill Office that Respondent had not made any effort to provide documentation of his mine foreman certification. Upon further research, Mr. Jude found that Respondent had submitted the underground mine foreman certification number of James Todd on the continuing education roster. (See Exhibit C attached hereto.)

Additional investigation at the Poplar Ridge No. 1 Mine revealed that Respondent had completed preshift-mine examiner's reports as a preshift-mine examiner or an assistant foreman using Mr. Todd's certification number at least 501 times between September 15, 2008 and June 5, 2009. Moreover, Respondent used Mr. Todd's certification number when signed the Record of Fire Drills on December 16, 2008. Additionally, Mr. Todd signed the Record of Fire Drills (without affixing a certification number) on September 30, 2008 and March 30, 2009.

It is without question that Respondent performed underground mine foreman duties at Poplar Ridge and that Respondent's illegal actions were confirmed by copies of the pre-shift and

on-shift reports as well as the Record of Fire Drills. OMHST submits that Respondent's actions of conducting mine foreman duties without having the required certification violated W. Va. Code § 22A-2-23 which states:

Notwithstanding any other provision in this article contained, any person who holds a certificate issued by the Office of Miners' Health, Safety and Training certifying his or her competency to act as fire boss may perform the duties of a fire boss and any other duties, statutory or otherwise, for which he or she is qualified, in the same mine or section and on the same day or shift.

CHARGE 2

OMHST incorporates by reference all facts and allegations contained above and submits that Respondent's actions violated W. Va. Code § 22A-1-31(a) which states in pertinent part, "A mine inspector or the director may charge...any other certified person with neglect or failure to perform any duty mandated pursuant to this article or article two of this chapter." OMHST further submits that the duty which Respondent, a certified person pursuant to his other cards, was required to perform was the obtaining of the required years of experience and training of an Underground Mine Foreman as required by W. Va. Code § 22A-2-7 (a).

WHEREFORE, OMHST prays that this administrative tribunal order that probable cause exists to show that Chad J. Ferrell violated statutory duties. OMHST further prays that this Board schedule a formal hearing to determine whether all miner certifications of any and all types issued by the West Virginia Office of Miners' Health, Safety and Training should be permanently withdrawn and Chad J. Ferrell permanently barred from holding any miner's certification.

Respectfully submitted,

RONALD L. WOOTEN, DIRECTOR
WEST VIRGINIA OFFICE OF MINERS'
HEALTH, SAFETY AND TRAINING,

By Counsel,

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

Elaine L. Skorich

Elaine L. Skorich (State Bar No. 8097)

Assistant Attorney General

1615 Washington Street, East

Charleston, West Virginia 25311

Telephone: (304) 558-1425

Fax: (304) 558-1282

EXHIBIT A

MASTER LIST OF ALL CERTIFICATIONS ISSUED TO THIS SSN

SSN: ██████████ 8686

Name: CHAD FERRELL

CERTIFICATION	NUMBER	ISSUED	EXPIRED	REVOKED
01 Certified Electrician:	_____	_____	_____	---
91 Elect., Related Equip.:	_____	_____	_____	---
92 Prep Plant Electrician:	_____	_____	_____	---
93 Surface Electrician:	_____	_____	_____	---
94 Shaft/Slope Electrician:	_____	_____	_____	---
25 Certified LM Electrician:	_____	_____	_____	---
26 Certified LMH Electrician:	_____	_____	_____	---
02 Apprentice Electrician:	_____	_____	_____	---
03 Surface Coal Truck Driver:	_____	_____	_____	---
04 Surface Apprentice Miner:	_____	_____	_____	---
05 Ug. Apprentice Miner:	4 12006	02/23/2001	_____	---
06 Underground Coal Miner:	4 10299	08/27/2001	_____	---
07 Surface Coal Miner:	_____	_____	_____	---
08 Shot Firer Certificate:	_____	_____	_____	---
09 Underground Mine Foreman:	_____	_____	_____	---
10 Asst. Ug. Mine Foreman:	_____	_____	_____	---
11 Surface Mine Foreman:	_____	_____	_____	---

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EXHIBIT B



West Virginia Office of Miners' Health Safety and Training
Continuing Education Mine Foreman – Roster

Instructor (print Instructor Name and Cert.#) Kenneth M. Perdue Date: 5-29-09

Date	Student Name	Address and Phone Number	SSN#	Cert.#
5-29-09	[Redacted] Prueett	[Redacted] Richlands, VA 24641	[Redacted]	37168
5-29-09	[Redacted] Baugh	[Redacted] Bluefield, WV 24701	[Redacted]	21462-66
5-29-09	[Redacted] Ogalee	[Redacted] North Tazewell, VA 24630	[Redacted]	38666
5-29-09	[Redacted] Dillon	[Redacted] North Tazewell, VA 24630	[Redacted]	1868-A
5-29-09	[Redacted] Daniels	[Redacted] WV 25817	[Redacted]	36147
5-29-09	[Redacted] Grimmatt	[Redacted] VA 24639	[Redacted]	38827
5-29-09	[Redacted] Kirk	[Redacted], WV 24801	[Redacted]	32274
5-29-09	[Redacted] Murphy	[Redacted] Matewan, WV 25678	[Redacted]	36227
5-29-09	[Redacted] Cook	[Redacted] Summersville, WV 26651	[Redacted]	32293
5-29-09	[Redacted] Hanlon	[Redacted] Exchange, WV 26619	[Redacted]	36014
5-29-09	[Redacted] Rider	[Redacted] Cowen, WV 26206	[Redacted]	39073-08
5-29-09	[Redacted] Lester	[Redacted] Pineville, WV 24874	[Redacted]	38530
5-29-09	[Redacted] Hagy	[Redacted] Panther, WV 24872	[Redacted]	1682-A
5-29-09	[Redacted] Justice	[Redacted] Hurley, VA 24620	[Redacted]	1527-A
5-29-09	[Redacted] Justice	[Redacted] Hurley, VA 246201	[Redacted]	1531-A
5-29-09	[Redacted] Rose	[Redacted] Anawait, WV 24808	[Redacted]	38113
5-29-09	[Redacted] Mullins	[Redacted] Laeger, WV 24844	[Redacted]	1726-A
5-29-09	[Redacted] Withrow	[Redacted] Fayetteville, WV 25840	[Redacted]	33577
5-29-09	[Redacted] Chad J. Ferrell	1230 Orndorf Rd Nettie, WV 26681	[Redacted] -8686	38817
5-29-09	[Redacted] Boggs	[Redacted] Fenwick, WV 26202	[Redacted]	1778-A

Instructor Signature _____ *** Attach copy of 5000-23 to this form ***

EXHIBIT C

OMHST MINER CERTIFICATION INFORMATION

<1> SSN/Cert Type Overlay: ██████████-1760-09
<2> Full Name: JAMES J. TODD
<9> Region: 1 REGION I, FAIRMONT

<10> Certification Number: 38817 08
<23> Certification: Underground Mine Foreman
<11> Issue Date: 03/18/2008 <12> Expiration Date: 00/00/0000

 <18> Flag Certification Revoked: _
 <57> Flag Out-of-State Revocation: _
 <33> Flag Granted Under Reciprocity Agreement: N
 <34> Flag Electrician's Certification Only: N
 <44> Flag Added As Pre-Existing Cert. (Dup. Issued): N
 <49> Flag Added As Pre-Existing Cert. (Dup. Not Issued): _

Cert. No. like PPPPnnnnnnnnSSS where P is the prefix, n is the number part and S is the suffix. Leave blank spaces between parts of the no. Press RETURN to continue -->

**BEFORE THE COAL MINE SAFETY BOARD OF APPEALS
STATE OF WEST VIRGINIA**

IN THE MATTER OF CHAD J. FERRELL;

Charged party,

Docket No: 09-DEC-6

VERIFICATION

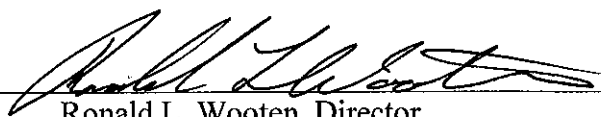
**STATE OF WEST VIRGINIA
COUNTY OF KANAWHA; to-wit:**

The undersigned, Ronald Wooten, Director of the State of West Virginia Office of Miners' Health, Safety and Training, being duly sworn, deposes and says the following:

I am the petitioner in the above captioned action. I have read the foregoing Petition for Withdrawal of Certifications and know its contents. The matters stated in the petition are true to the best of my knowledge, except for those matters based upon information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of West Virginia that the foregoing is true and correct.


Executed on this 27th day of July, 2009, at Charleston, West Virginia.



Ronald L. Wooten, Director

Subscribed and sworn before me this 28th day of July, 2009.

My commission expires April 26, 2010.



Notary Public