

**BEFORE THE BOARD OF APPEALS**

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

**Petitioner,**

v.

**Docket No. 09-DEC-7**

**LUKE W. PUGH,**

**Respondent.<sup>1</sup>**

**FINAL ORDER SUSPENDING ALL MINER CERTIFICATES**

On the 25th day of February, 2010, came the Office of Miners' Health, Safety and Training (Petitioner), by counsel, Elaine L. Skorich, Assistant Attorney General, for a hearing on the Charges for Permanent Withdrawal of Certifications filed previously in this matter. All members of the Board were present. Service of the Charges for Permanent Withdrawal of Certifications and the Notice of Hearing were perfected. Neither counsel for Petitioner nor Tina Miller, secretary to the Board, had been contacted by Respondent concerning a request for continuance of the February 25, 2010, hearing.

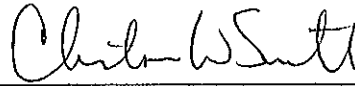
**WHEREFORE**, due to the failure of the charged party to appear at the hearing it is **ORDERED** that all mining certifications issued to Respondent (namely: Underground Coal Miner Certification #NO-10932-UGA and Mine Rescue Team Member #1-108) are hereby suspended pending further order of the Board. Respondent shall not work using any of the above-listed certifications nor shall he apply for any new certifications to the Office of Miners' Health, Safety and Training pending further order of the Board.

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

It is **FURTHER ORDERED** that this matter is stricken from the docket.

ENTERED THIS 1<sup>st</sup> DAY OF March, 2010.



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CLINTON W. SMITH, CHAIRMAN  
Board of Appeals

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

IN THE MATTER OF LUKE W. PUGH;

Charged party,

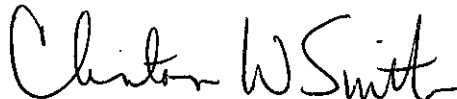
DOCKET NO.: 09-DEC-7

**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 Luke W. Pugh, to act as a coal miner under any certificate, including underground coal miner NO-10932-UGA and mine rescue team member 1-108, until the conclusion of the proceedings.

The Board having considered the same hereby finds probable cause to exist for withdrawal of said certifications of Luke W. Pugh, 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.



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CLINTON W. SMITH, CHAIRMAN  
MINE BOARD OF APPEALS

Dated this the 14<sup>th</sup> day of September, 2009.

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

**IN THE MATTER OF:**

**LUKE W. PUGH,**

**DOCKET NO.: 09-DEC- 7**

**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 Luke W. Pugh (hereinafter "Respondent"), including certificates numbered NO-10932-UGA (Underground Coal Miner) and 1-108 (Mine Rescue Team Member), 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 Coal Miner Certificate #NO-10932-UGA on August 6, 1982, and Mine Rescue Team Member Certificate #1-108 on July 21, 2006. (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 Carter Roag Coal Company's (hereinafter "Carter") Pleasant Hill Mine in Randolph County, West Virginia.

On May 6, 2009, Ed Peddicord, OMHST Safety Instructor, informed Bill Currence, Safety Director at Carter, that one of Carter's foreman had entered a wrong certification number on the Mine Foreman Continuing Education roster. (See Exhibit B attached hereto.) Mr. Peddicord asked Mr. Currence to check the number when he returned to the mine.

Upon arriving at the mine, Mr. Currence asked Respondent to bring in his certification card the next day so that they could correct the problem. Respondent agreed to bring in the card; however, he did not report for work the next day. On May 8, 2009, Respondent went to the mine but left shortly after picking up his paycheck. Carter made several unsuccessful attempts to contact Respondent. Finally, during the week of May 11, 2009, Carter sent Respondent a certified letter advising him that he was unable to work until he produced his certification card. After receiving no response from Respondent, Carter sent him a certified letter discharging him from his employment with Carter.

Upon further research by OMHST, it was discovered that Respondent had been using the Underground Mine Foreman Certification number of Robert Nichols. (See Exhibit C attached hereto.) On his application for employment with Carter, Respondent reported that he possessed both an Underground Mine Foreman Certification as well as a Shot Firer Certification. (See Exhibit C attached hereto.) During the investigation of an October 20, 2007 fatality wherein Respondent was supervising the production crew, Respondent completed a Witness Data sheet using Mr. Nichols' Underground Mine Foreman Certification. (See Exhibit E attached hereto.)

Additional investigation at the Pleasant Hill Mine revealed that Respondent had completed preshift-mine examiner's reports as a preshift-mine examiner or an assistant foreman using at least 541 times between June 18, 2007 and April 28, 2009. Moreover, Respondent signed the Smokers' Book nine (9) times between May 15, 2008 and September 24, 2008.

It is without question that Respondent performed underground mine foreman duties at Pleasant Hill and that Respondent's illegal actions were confirmed by copies of the pre-shift and on-shift reports as well as the Smokers' Book. 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).

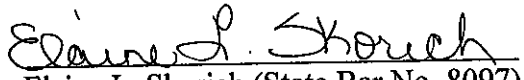
WHEREFORE, OMHST prays that this administrative tribunal order that probable cause exists to show that Luke W. Pugh violated statutory duties. OMHST further prays that this Board schedule a formal hearing to determine whether all miner certifications of any and all types issued by the West Virginia Office of Miners' Health, Safety and Training should be permanently withdrawn and Luke W. Pugh 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 (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: ██████████1898

Name: LUKE W. PUGH

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:	-----	-----	-----	--
06 Underground Coal Miner:	NO 10932 UGA	08/06/1982		--
07 Surface Coal Miner:	-----	-----		--
08 Shot Firer Certificate:	-----	-----		--
09 Underground Mine Foreman:	-----	-----		--
10 Asst. Ug. Mine Foreman:	-----	-----		--
11 Surface Mine Foreman:	-----	-----		--

Press RETURN to continue -->

MASTER LIST OF ALL CERTIFICATIONS ISSUED TO THIS SSN - CONT'D.  
 SSN: ██████████ 1898 Name: LUKE W. PUGH

CERTIFICATION	NUMBER	ISSUED	EXPIRED	REVOKED
12 Asst. Surface Mine Foreman:	-----	-----		-
13 Sh/S1 Superintendent:	-----	-----		-
14 Sh/S1 Examiner Foreman:	-----	-----		-
15 Surface Const. Super.:	-----	-----		-
16 Clay Mine Foreman:	-----	-----		-
17 Mine Rescue Team Member:	1 108	07/21/2006		-
18 Gas-Testing Instructor:	-----	-----	-----	-
20 Shaft/Slope Shot Firer:	-----	-----		-
21 Belt Examiner:	-----	-----		-
22 Mine-Rescue Instructor:	-----	-----		-
23 40-Hour Instructor:	-----	-----		-
24 80-Hour Instructor:	-----	-----		-
27 Gas Test Ins. - Cst/Sh/S1:	-----	-----	-----	-
28 Qualified Diesel Instr.:	-----	-----		-
29 Qualified Clearing Crew:	-----	-----		-
30 Qualified Person - Elect.:	-----	-----	-----	-
31 Cont. Ed. Ug. MF Instr.:	-----	-----		-
Social Security Number?				

# **EXHIBIT B**



West Virginia Office of Miners' Health Safety and Training

Continuing Education Mine Foreman - Roster

Billy L. Currenne 35132  
JERALD B. JONES 33983-84

Date: 3-28-09

Instructor (print Instructor Name and Cert.#)

Site	Student Name	Address and Phone Number	SSN#	Cert.#
-28-09	Owens, Larry	Elkins, WV 26241	[REDACTED]	37028
"	Phillips, Bradley	[REDACTED] Elkins, WV 26241	[REDACTED]	36068
"	Phillips, William	[REDACTED] Coalton, WV 26257	[REDACTED]	35605
"	Pugh, Luke	1445 US Hwy 19 North, Janelew, WV	[REDACTED] 1898	36276
"	Riegal, Mark	[REDACTED] MillCreek, WV 26280	[REDACTED]	34460
"	Rieglerman, Mike	[REDACTED] MillCreek, WV 26280	[REDACTED]	36847
"	Scott, Rocky	[REDACTED] MillCreek, WV 26280	[REDACTED]	36840
"	Smith, James M	[REDACTED] Valley Bend, WV 26293	[REDACTED]	35116
"	Summerfield, Bradley	[REDACTED] Beverly, WV 26253	[REDACTED]	38991
"	Summerfield, Kenneth	[REDACTED] MillCreek, WV 26280	[REDACTED]	37605
"	Tenney, Semeon	[REDACTED] MillCreek, WV 26280	[REDACTED]	31989
"	Wamsley, David	[REDACTED] Beverly, WV 26253	[REDACTED]	1712-A
"	Wilson, Bill	[REDACTED] Buckhanna, WV 26281	[REDACTED]	39000-08
"	Jones, James	[REDACTED] Mike W.V. 26278	[REDACTED]	36861
"	Bartelli, Jeff	[REDACTED] Norton W.V. 26285	[REDACTED]	38029

# **EXHIBIT C**

MASTER LIST OF ALL CERTIFICATIONS ISSUED TO THIS SSN

SSN: ██████████ 9918

Name: ROBERT NICHOLS

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:	-----	-----	-----	---
06 Underground Coal Miner:	L 8193	-----	-----	---
07 Surface Coal Miner:	-----	-----	-----	---
08 Shot Firer Certificate:	-----	-----	-----	---
09 Underground Mine Foreman:	36276 92	08/20/1992	-----	---
10 Asst. Ug. Mine Foreman:	-----	-----	-----	---
11 Surface Mine Foreman:	-----	-----	-----	---

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OMHST MINER CERTIFICATION INFORMATION

<1> SSN/Cert Type Overlay: ██████████ 9918-09  
<2> Full Name: ROBERT NICHOLS  
<9> Region: 0 -----  
  
<10> Certification Number: 36276 92  
<23> Certification: Underground Mine Foreman  
<11> Issue Date: 08/20/1992 <12> Expiration Date: 00/00/0000  
  
    <18> Flag Certification Revoked: -  
    <57> Flag Out-of-State Revocation: -  
    <33> Flag Granted Under Reciprocity Agreement: -  
    <34> Flag Electrician's Certification Only: -  
    <44> Flag Added As Pre-Existing Cert. (Dup. Issued): N  
    <49> Flag Added As Pre-Existing Cert. (Dup. Not Issued): -

Cert. No. like PPPPnnnnnnnSSS 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 -->

# **EXHIBIT D**



Tuke Pugh  
Name

5/27/05  
Date

# APPLICATION FOR EMPLOYMENT

An  
Equal  
Opportunity  
Employer

An  
Equal  
Opportunity  
Employer

## PERSONAL INFORMATION

Name (Print) Tuke W Pugh

Home or Nearest Phone 269-4127

Present Address 1445 US Highway 19 North

Social Security No. [REDACTED]-1090

Franklin W Va 26370  
(City) (State) (Zip)

Contact in Case of Emergency NANCY PUGH  
(Name)

269-4127  
(Telephone Number)

If at present address less than one year, please give previous address \_\_\_\_\_

Are you at least 18 years of age?  Yes  No (Employment is subject to verification of minimum legal age.)

Can you produce documented proof of your identity and eligibility for employment in the United States?  Yes  No  
(Examples: driver's license, Social Security card, birth certificate, and/or Immigration and Naturalization Service Documents)

Position(s) applied for Fire Boss anything

How soon could you report to work? NOW

Type of employment desired  Full-Time  Part-Time  Temporary Rate of pay Expected \_\_\_\_\_

What days and hours, if part-time? Days \_\_\_\_\_ Hours \_\_\_\_\_  
From ( AM ) to ( ) PM

## EDUCATION

Type of School	Name and Address of School	Courses Majored In	Check Last Year Completed	Graduate? Show Degree
Elementary/Middle			5 6 7 8	
High School	<u>Peterson's High</u>		9 10 11 <u>12</u>	
College			1 2 3 4	
Post Graduate				

Have you applied for a job with us before?  Yes  No Have you ever worked for us before?  Yes  No

How did you come to apply?  Employee Referral  Former Employee  Newspaper Ad  High School Recruitment  
 College Recruitment  Walk-In  Other \_\_\_\_\_

Have you ever been bonded?  Yes  No Have you ever been refused a bond  Yes  No

If yes, state reason and date \_\_\_\_\_

Have you ever been convicted of a violation of the law except a minor traffic violation?  Yes  No If yes, state date, court, and place where offense occurred \_\_\_\_\_  
(A conviction will not necessarily disqualify you from employment)

Have you ever been discharged or requested to resign from a position?  Yes  No

Are you employed now?  Yes  No If yes, may we contact your present employer?  Yes  No

Have you ever held a position of trust (handling money or confidential material)?  Yes  No

If yes, describe \_\_\_\_\_

Do you have any reason to believe that you would have difficulty meeting this company's work schedules?  Yes  No

PRIOR WORK RECORD (Start with most recent or present employer and complete in full.)

Name and Address of Most Recent Employer <i>Adkissony</i>		Telephone No. <i>472-6852</i>
Immediate Supervisor's Name & Position <i>Johnny Bishoff</i>	Date Hired <i>Feb 1st, 2001</i>	Starting Rate <i>14.00</i>
Job Title & Duties <i>Boss, Boiler Scoop Bugger</i>	Date Left	Last Rate <i>16.00</i>
Reason for Leaving	May we contact this employer? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Name and Address of Former Employer <i>Criff Coal</i>		Telephone No.
Immediate Supervisor's Name & Position <i>Buzz Bailey</i>	Date Hired <i>2 years</i>	Starting Rate
Job Title & Duties <i>Miner OP Scoop</i>	Date Left	Last Rate
Reason for Leaving <i>Laid off</i>	May we contact this employer? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Name and Address of Former Employer <i>Toy Coal</i>		Telephone No.
Immediate Supervisor's Name & Position <i>John Young</i>	Date Hired <i>3 years</i>	Starting Rate
Job Title & Duties <i>Mechanic Miner OP Botted</i>	Date Left	Last Rate
Reason for Leaving <i>Laid off</i>	May we contact this employer? <input type="checkbox"/> Yes <input type="checkbox"/> No	

Please provide any additional information such as special skills, training, experience, equipment operation, or other qualifications you feel will be helpful to us in considering your application. *Shot firer cert., mine foreman cert.,*

REFERENCES

(Do not list relatives or former employers)

Name <i>Johnny Bishoff</i>	Address <i>Buckthornwood</i>	Telephone <i>472-6852</i>
Name <i>Mark Thomas</i>	Address <i>Buckthornwood</i>	Telephone <i>472-6852</i>
Name <i>Allen Thomas</i>	Address <i>Buckthornwood</i>	Telephone <i>472-6852</i>

*Luke Pugh*  
Signature of Applicant

*5-27-05*  
(Date)

# **EXHIBIT E**

WITNESS DATA

INDIVIDUALS NAME Luke Pugh

MAILING ADDRESS 1445 US Highway 19 N  
JANEW

TELEPHONE NUMBER 269-4127

OCCUPATION OR TITLE COAL MINER

EMPLOYED BY Carter Roy Coal Company

HOW MUCH EXPERIENCE DID THE INDIVIDUAL HAVE 16 years

HOW LONG HAS THE INDIVIDUAL BEEN EMPLOYED AT THIS MINE 6  
# months

HOW LONG HAS THE INDIVIDUAL BEEN EMPLOYED BY THIS COMPANY Since Dec 12  
11 months

HOW LONG HAS THE INDIVIDUAL BEEN AT THIS PARTICULAR JOB OR TITLE

MINER CERTIFICATION # 10932-UGA

ELECTRICIAN CERTIFICATION # \_\_\_\_\_

FOREMAN CERTIFICATION # 36276-P9

OTHER CERTIFICATIONS \_\_\_\_\_

HOW LONG CERTIFIED 1989

SHIFT EMPLOYED Evening 2nd Shift

STARTING TIME 400 pm

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

IN THE MATTER OF LUKE W. PUGH

Charged party,

Docket No: 09-DEC-7

**VERIFICATION**

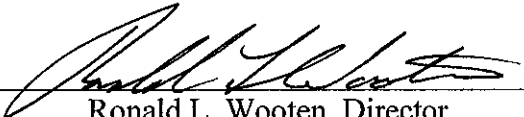
**STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA; to-wit:**

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 28<sup>th</sup> day of July, 2009.

My commission expires April 26, 2010.

  
\_\_\_\_\_  
Notary Public

