

BEFORE THE BOARD OF APPEALS
STATE OF WEST VIRGINIA

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

Petitioner,

v.

DOCKET NO.: 13-DEC- 1

SEAN A. CHASE,

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 Sean A. Chase, *pro se*, in the above captioned matter and requests that this Board accept the following settlement agreement and dismiss these proceedings under the following terms:

1. On or about April 3, 2013, OMHST filed "Charges for Withdrawal of Certification" against Mr. Chase with the West Virginia Board of Appeals (Board). In that charge, OMHST alleged that Mr. Chase conducted pre-shift and on-shift examinations from January, 2013 through March, 2013 at the Tunnel Ridge Coal, LLC mine located near Tridelpia, Ohio County, West Virginia, without possessing the proper certifications to perform those examinations. OMHST alleged that these facts violated W. Va. Code §§ 22A-2-7 and 22A-1-31(a).

2. Prior to the hearing, OMHST and Mr. Chase entered into the following agreement:

- a. Mr. Chase's Surface Apprentice Miner Certificate No. 4-20384, Underground Apprentice Miner Certificate No. 4-15362, and Underground Coal Miner Certificate

No. 3-15631 shall be suspended for one (1) year beginning May 31, 2013. Mr. Chase shall surrender all certificates to the OMHST within ten (10) days after this Settlement Agreement and Dismissal Order is entered by the Board.

- b. During this one (1) year suspension period, Mr. Chase agrees not to seek any additional certifications issued by the OMHST.
- c. After the one (1) year suspension period has expired, Mr. Chase's Surface Apprentice Miner Certificate No. 4-20384, Underground Apprentice Miner Certificate No. 4-15362, and Underground Coal Miner Certificate No. 3-15631 shall be automatically reinstated. Mr. Chase shall notify OMHST ten (10) days prior to the expiration of the suspension period and provide OMHST with an address as to where he wants his certificates mailed.
- d. At the end of the one (1) year suspension period, Mr. Chase 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); or a belt examiner certificate pursuant to W. Va. Code § 22A-2-39(I). For purposes of determining whether Mr. Chase has the required work experience to qualify as an assistant underground mine foreman, or belt examiner, OMHST shall only consider work experience and/or education obtained after the expiration of the suspension period. So long as Mr. Chase meets the, then in effect, qualification of the certification sought and passes the required test, Mr. Chase shall be entitled to obtain that certification. Mr. Chase 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 expiration of the suspension period.

- e. Mr. Chase shall not engage in any activity or function requiring any West Virginia Certified Miner Certificate during the suspension period.

OMHST agrees that it shall take no further administrative, judicial or legal action against Mr. Chase related to the events giving rise to this proceeding. Nothing in this Settlement Agreement and Dismissal Order shall be deemed an admission of fault or liability by Mr. Chase or an admission of a violation of a federal or state health and safety law or regulation or an admission of the allegations contained within the Charges 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 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 Mr. Chase or to be used in any judicial, administrative or criminal forum for any other purpose whatsoever except for proceedings instituted 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.

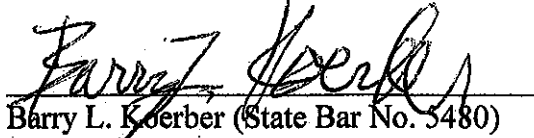
ENTERED THIS 11th DAY OF June, 2013.



Clinton W. Smith, Chairman
Board of Appeals

PREPARED AND AGREED TO BY:

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SEEN AND AGREED TO BY:



Sean A. Chase

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