

BOARD OF COAL MINING EXAMINERS

SUMMARY OF MEETING

NOVEMBER 1, 2011

The following is a summary of the November 1, 2011 Meeting:

- I. Meeting called to order at 9:10 AM by Randy Moore, Chairman. Members present were Randy Moore, Joseph Buchanan, Gerald Kendrick, Arvil McConnell and Ricky O'Quinn. Also present were Mary Gibson, Regulatory Boards Administrator, Sharon Pigeon, Sr. Assistant Attorney General and Deputy Director Butch Lambert.**
- II. Opening statement delivered by Randy Moore, Chairman.**
- III. Motion made and seconded to accept November 1, 2011, meeting agenda and approve October 4, 2011, meeting summary. All members were in favor to approve.**
- IV. Review of Virginia Substance Abuse Cases (Closed Session)**

Of the cases that resulted in hearings, evidence was taken by the Board in closed session, pursuant to Virginia Code §§ 2.2-3711(A)(4) and 45.1-11.35(E). In the closed session, the Board worked out agreements, allowing individuals to return to work conditionally, and took other disciplinary actions including revocation of all certifications held by miners.

V. Open Agenda

The Board reviewed a decision made at the Board's meeting of March, 2008, regarding a requirement of certification applicants being English speaking. The DMME Deputy Director (at that time) stated that DMME's position is that the certification training be done in English with no interpreter. The Board today reaffirmed this position.

An independent trainer has notified DMME that the trainer has conducted general miner certification training using an interpreter. And, a large coal company contacted the DM Chief stating they need these non-English speaking people as laborers in certain capacities.

Presently, there is no designation on the application for certification form that the English-speaking requirement is met. One suggestion is that the application could be modified to capture this requirement. Another

recommendation was to flag on the DMME certification computer system if the certified general miner does not have possession of the card or does not have a current address on record which is a requirement by law. This determination would be made upon receipt of the cards returned to DMME undeliverable by the post offices.

The DM Chief will send an Operators Memorandum to operators, BCME instructors and mine foremen affirming the position on the requirement of those individuals being trained for general miner to be able to speak and understand the English language.

The Board discussed the certified mail delivery of correspondence to certified individuals in suspension or revocation under substance abuse procedures. A large number of these certified mail items are not being picked up at the post offices and are returned to DMME. The certified mail cost is a considerable amount each month. The Board recommended a change in procedure so that this mail no longer is sent by certified mail and that alternately an electronic log of the mailings be established and maintained.

Chairman Randy Moore informed the Board of recent receipt of letter from John Beasley's attorney requesting that his client's certifications be reinstated after suspension in February 2010. He further stated that the Buchanan County Commonwealth Attorney has entered into an agreement with John Beasley that the Commonwealth will never again prosecute Mr. Beasley on the current charge. The Buchanan County Commonwealth Attorney also notified DMME by letter that their office will no longer pursue charges against Mr. Beasley. The Board had postponed their action in his case pending the outcome of the case with Buchanan County. Attorney Scott further requests that the Notice of Violation be abated.

Upon discussion, a motion was made and passed unanimously by the Board that a settlement agreement be offered by Chief Moore to Mr. Beasley that his certifications be reinstated effective November 2, 2011, with these stipulations:

- Penalty has been served since suspension period beginning February 2, 2010.
- Must complete the First Class Mine Foreman continuing education requirement.
- Attend a specifically-designed class by DM on the Coal Mine Safety Laws of Virginia.
- Two year probation period, ending November 1, 2013.
- Should personal violations be written during probationary period, must appear before the Board.
- NOV remains as written with no further action.

Randy Moore reported on his meeting with the Virginia Coal Association regarding proposed legislation changes. Industry does not support the proposed change to allow the drug screening panel to be approved by the Board. They are not opposed, however, to exploring the change next year with early dialogue.

VI. Next Meeting

Next meeting will be December 6, 2011.

VII. Adjournment

Meeting adjourned at 4:00 PM.