Coal Company Sues Worker Who Had Safety Worry

DYLAN LOVAN,Associated Press

LOUISVILLE, Ky. (AP) — The federal agency that oversees mine safety claims a western Kentucky coal company broke the law by filing a lawsuit against a former worker who complained about unsafe working conditions.

Using a federal law designed to protect workers, welder Reuben Shemwell lodged a complaint last year against Armstrong Coal after he was fired in 2011 from his job at the company's Parkway Mine.

The U.S. Mine Safety and Health Agency, an arm of the Department of Labor, investigated but ultimately decided not to pursue Shemwell's complaint. The agency got involved again this month when Armstrong Coal sued Shemwell.

MSHA said Armstrong's suit, filed in August, violated the section of the law designed to protect miners who file discrimination complaints.

"I've been doing these cases for over 30 years ... and I have never heard or experienced a coal company suing a miner because MSHA turned down their case on the merits," said Shemwell's attorney, Tony Oppegard.

Oppegard said Armstrong Coal's lawsuit was a retaliatory action.

Armstrong Coal has maintained that Shemwell was fired for using his cellphone too much on the worksite, and not for complaining about work conditions. Shemwell worked for a division of Armstrong Coal called Armstrong Fabricators.

An Armstrong Coal representative did not return a call for comment Wednesday. The company runs several surface and underground mines in coal-rich regions of western Kentucky.

"Shemwell filed his discrimination claim for the purpose of causing (Armstrong Coal) to incur unnecessary and substantial costs in defending against his false discrimination claim," according to the lawsuit filed in Muhlenberg County Circuit Court.

The lawsuit asks for damages and attorney fees, but no amount of money was specified.

Discrimination complaints filed by miners against their employers over suspensions, layoffs or firings have increased in recent years, according to MSHA. The mine safety agency can petition to have workers reinstated to their job while their claims are pending. MSHA filed an annual average of 34 requests for temporary

reinstatement from 2009 to 2012, including a high of 46 in 2012. The agency filed an average of just six per year from 1993 to 2008.

"We take these rights under the Mine Act very seriously and will vigorously investigate all discrimination complaints," Joe Main, the assistant Secretary of Labor for mine safety and health, said in a statement Tuesday.

Shemwell, a father of three who is divorced, has not been able to find work in the mining industry since his departure from Armstrong Coal, Oppegard said. He is installing carpet to make ends meet.

Shemwell had claimed he was overcome with fumes while working on a piece of machinery, and in another incident he complained about inadequate respirators, Oppegard said. Armstrong Coal said in its suit that Shemwell was disciplined on three different occasions for using his cellphone during work hours, the last time being on July 22, 2011. He was fired on Sept. 14 of that year.

After Armstrong Coal filed the lawsuit against Shemwell, he responded by asking the mine agency on Jan. 8 to get involved again because he felt he was being retaliated against.

The Federal Mine Safety and Health Review Commission, an administrative court in Washington that handles the discrimination complaints, has scheduled a hearing on Shemwell's case for Feb. 27.

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