COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. **06-MSRC-012**

COMMONWEALTH OF KENTUCKY,
OFFICE OF MINE SAFETY AND LICENSING — COMPLAINANT

FINAL ORDER
FOR
SHANNON HURT

TIM BROCK, ARVIL CAMPBELL,
SHANNON HURT & GARY SIMPSON — RESPONDENTS

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PROCEDURAL HISTORY

This matter comes before the Mine Safety Review Commission upon a Motion for Default by the Complainant, Kentucky Office of Mine Safety and Licensing ("OMSL"). OMSL by counsel, filed its Complaint on April 14, 2006, against the Respondents as above. Probable Cause was determined by the Mine Safety Review Commission ("Commission") on May 11, 2006 regarding each Respondent. Subsequent to that determination the Order for Probable Cause, Assigning Case, Setting Filing Requirements, Scheduling Pre-hearing Conference and Scheduling Formal Hearing ("Order") was mailed regular mail and certified mail to all respondents as above with a copy of the Complaint attached.

The Order and Complaint were delivered to Respondent Shannon Hurt on May 16, 2006. The original return receipt show delivery to the address Respondent Hurt filed with OMSL for licensing and certification purposes.

FINDINGS OF FACT

1. OMSL is the agency charged with administering the Commonwealth's safety laws as set forth in KRS Chapters 351 and 352 and the Kentucky Administrative Regulations adopted pursuant thereto.
2. Respondent Shannon Hurt ("Hurt") was, at all times relevant to this Complaint, a citizen and resident of the Commonwealth of Kentucky, whose mailing address is: HC 77 Box 1690 Delphia KY 41753. At all times relevant to this Complaint, Hurt was a Chief Electrician at the Motivation Enterprise No. 3 mine ("the mine"), an underground coal mine operated by Motivation Enterprises, Inc., ("Motivation" or "the company") and located at Cornettsville, Perry County, Kentucky.
3. Respondent Hurt is certified as an electrical worker by the Commonwealth of Kentucky on certificate number HD-308-04. He is also certified by the Commonwealth as an underground miner.
4. Jurisdiction for this action is founded upon KRS 352.390, which provides that the "Mine Safety Review Commission shall revoke, suspend, or probate certificates if it is established in the judgment of the Commission that the holder has become unworthy to hold the certificate by reason of violation of law, intemperate habits, incapacity, abuse of authority, failure to comply with the mining laws of the Commonwealth of Kentucky, or for other just cause;" on KRS 351.025(1), which requires the Department of Mines and Minerals (now the Office of Mine Safety and Licensing) to "promulgate administrative regulations...for the imposition and enforcement of sanctions

against certified...personnel...whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death;" and on 805 KAR 8:030 ("Criteria for the imposition and enforcement of sanctions against certified miners").

5. Service of the Order and Complaint upon Respondent Hurt is determined to be perfected pursuant to 825 KAR 1:020 Section 5 (3) and KRS 13B.050.
6. Respondent Hurt did not file an Answer or any other responsive pleading within the time limit established by the Commission and KRS 13B and has not filed an Answer or other responsive pleading on or before the Motion for Default Order was filed at MSRC. Additionally, Respondent Hurt has not filed a response to or opposed the Motion for Default Order on or before the date of this order, July 13, 2006.

CONCLUSIONS OF LAW

Based upon the evidence admitted, the failure of the Respondent to deny or otherwise defend and the record taken as a whole, the Commission finds the foregoing facts are established by a preponderance of the evidence. By reason of his role in and responsibilities for the violations of Kentucky's mine safety laws set out in the Complaint of record herein, Respondent Hurt is subject to the imposition of sanctions as provided in KRS 352.390 and 805 KAR 8:030.

FINAL ORDER

WHEREFORE, it his hereby **ORDERED** by the Mine Safety Review Commission:

1. The Motion for Default Judgment as to Shannon Hurt is **GRANTED**.
2. The Formal Hearing and Pre-Hearing Conference, and other pre-hearing deadlines are hereby **CANCELLED** as to Hurt, but remain fully in effect for all other Respondents.
3. The Commission Orders and incorporates the disciplinary measures as provided in the Complaint as to Hurt and the following measures as a material part of this **FINAL ORDER**.
4. Hurt's electrical worker's certificate number HD-308-84, shall be **suspended** for a period of six (6) months.
5. Hurt's surface and underground miner's certificates shall be placed on **probation** for a period of one (1) year.
6. During Hurt's one (1) year period of probation he shall **not be allowed to take the mine foreman's examination**.
7. During his period of probation Respondent Hurt shall be required to comply with all state and federal mine safety laws and regulations and that the willful violation of any said laws or regulations may result in OMSL filing a motion with the Mine Safety Review Commission to revoke that Respondent's underground miner's certificate for the remainder of the probationary period.

8. Respondent Hurt shall be required to take **eight (8) hours of special safety training** from an OMSL's Hazard district office within forty-five (45) days of the date that this judgment is entered against them.
9. This Final Order only resolves the matters referenced herein, and any new enforcement action or subsequent penalties imposed during any probationary period are in addition to and not in lieu of those that may be sought by OMSL for the acts or omissions during that probationary period. This Final Order in no way prohibits OMSL from investigating or filing legal action based upon other activities or omissions by the Respondent not arising from the factual basis of the original violation and resolved herein.
10. This Final Order shall be considered to constitute a "first offense" as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent, resulting in an adjudication of guilt by the Commission, shall be deemed "subsequent offenses" as defined by 805 KAR 8:010, Section 1(13);
11. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, in these matters. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and

12. Appellate rights: Pursuant to KRS 351.194(8) and KRS 13B.140(1), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of this Final Order. The petition shall include the names and addresses of all parties of record in this proceeding and shall include a statement of the grounds upon which review is requested. A copy of this Final Order shall accompany the petition. Copies of the petition must be served upon the Commission and all parties of record in this proceeding.

Entered this the 13TH day of July 2006.

DENISE MOORE DAVIDSON, CHAIR 2/1
MINE SAFETY REVIEW COMMISSION
Commissioner Hon. William Doan
voted to deny motion

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this 14TH day of July 2006:

SHANNON HURT
HC 77 BOX 1690
DELPHIA, KY 41735

7006 0100 0005 2636 5487

And by regular mail to:

TIM BROCK
P.O. BOX 1294
HARLAN, KY 40831

ARVIL CAMPBELL
P.O. BOX 1656
HYDEN, KY 41749

HON BARBARA E YEAGER
P.O. BOX 601
BARBOURVILLE KY 40906
Counsel for Gary Simpson

And by messenger mail to:

Hon. Steven C. Boyd
Office of Legal Services
Natural Resources Legal Division
#2 Hudson Hollow
Frankfort, Kentucky 40601
(502) 564-2356
FAX: (502) 564-9212

And the original shall be kept on file:

Mine Safety Review Commission
132 Brighton Park Blvd.
Frankfort Ky 40601

Bryon Alan Thompson

Bryon Alan Thompson
Hearing Officer & General Counsel
Mine Safety Review Commission