

CCASE:
MSHA V. KERR-MCGEE NUCLEAR
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
November 14, 1979

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),

v. Docket No. DENV 79-201-P

KERR-McGEE NUCLEAR CORPORATION

DIRECTION FOR REVIEW AND ORDER

The decision of the Administrative Law Judge is directed for review. It is found that the Judge's decision may be contrary to law or Commission policy, and that a novel question of policy is presented. The issue is whether the Judge's decision meets the requirements of Commission Rule 65(a), 29 CFR \$2700.65(a).

This case arose when the Secretary of Labor sought the assessment of a civil penalty against Kerr-McGee Chemical Corporation for an alleged violation of a mandatory mine safety standard. The Judge held a hearing, and, at its conclusion, orally announced a decision from the bench that was read into the record. Several weeks later, the Judge's written decision was issued. That decision states:

This proceeding arose under section 110(a) of the Federal Mine Safety and Health Act of 1977. A hearing on the merits was held in Denver, Colorado, on September 27, 1979, at which both parties were well represented by counsel. After considering evidence submitted by both parties and proposed findings of fact and conclusions of law proffered by counsel during closing argument, I entered a detailed opinion on the record. It was found that the violation charged in the withdrawal order did not occur.

The petition having no merit, this proceeding is

dismissed.

We conclude that this decision does not meet the requirements of Commission Rule 65(a), 29 CFR §2700.65(a). That rule requires judges' decisions to be written, requires that they "include findings of fact, conclusions of law, and the reasons or bases for them on all the material issues of fact, law, or discretion presented by the record ...", and states that "[i]f a decision is announced orally from the bench, it shall be reduced to writing after the filing of the transcript." The Judge's written decision here, however, does not include findings of fact, conclusions of law, or the reasons or basis for them, nor was the bench decision included in the written decision.

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The Judge's decision is therefore vacated. The case is remanded to the Judge for the entry of a decision in accordance with the Commission's Rules of Procedure.