

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

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October 3, 2017

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 2016-0123
Petitioner,	:	A.C. No. 46-01436-396817
v.	:	
	:	
CONSOLIDATION COAL CO. now	:	
THE OHIO COUNTY COAL CO.,	:	Mine: Shoemaker Mine
Respondent.	:	

DECISION APPROVING SECOND SETTLEMENT MOTION
ORDER TO PAY

Before: Judge Moran

This case is before the Court upon a petition for assessment of a civil penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977. On January 19, 2017, the Secretary filed his first motion to approve settlement. The originally assessed total amount was \$72,500.00 and the proposed settlement was for \$39,875.00. The Secretary also requested that two citations be modified, as indicated below. On June 21, 2017, the Court issued a decision denying the settlement motion because there was insufficient information to justify the reduced penalty amounts and modifications. The Secretary then filed a Motion for Reconsideration along with an amended settlement motion on June 29, 2017.

Regarding Citation No. 9083151, which alleged a violation of 30 C.F.R. § 75.202(a), in the original motion, the rationale presented for the proposed penalty reduction stated only, “Though there was visible deterioration to the ribs, Respondent presented evidence that this condition did not exist for an extended period of time. In consideration of this evidence, which slightly mitigates negligence, and the risks inherent in proceeding to a hearing, the Secretary agreed to reduce the penalty.” Secretary’s January 19, 2017 Motion to Approve Settlement at 3.

As the Court stated in its June 21, 2017 Order, it “does not consider an unadorned assertion that the “*Respondent presented evidence* that this condition did not exist for an extended period of time,” standing alone, as useful information ... if section 110(k) is to be meaningful, it is patently insufficient for the Secretary to merely state that the Respondent presented evidence that this condition did not exist for an extended period of time. Some basis for the Respondent’s claim must accompany such an assertion.” June 21, 2017 Decision Denying Settlement Motion at 4-5; n. 3 (emphasis in original).

As noted, following the Court's denial of the settlement motion, on June 29, 2017, the Secretary filed a motion for reconsideration, along with an amended settlement motion. In the amended motion the Secretary presented the following regarding Citation No. 9083151:

This citation was issued in August 2015 due to visible deterioration of the ribs. On June 10, 2015, the Operator issued a companywide safety memo instructing miners to install additional rib bolts in the mains and on every corner. The Operator was taking measures to address the poor rib conditions. However, the state of this particular coal seam was such that the ribs were well-supported for an extended period of time even without rib bolts, but due to abutment pressure from longwall mining, the ribs could deteriorate quickly. The penalty under the regular assessment criteria would have been \$2,282.00. Therefore, the Secretary believes Respondent's negligence, while moderate, was somewhat less than the special assessment markup and that a reduction in penalty in this instant case is consistent with his enforcement responsibility of the Mine Act.

Secretary's Amended Motion for Decision and Order Approving Settlement at 3.

In light of this information, the Secretary proposes a settlement amount of \$6,513.00, rather than the initially proposed penalty of \$11,500.00, with no modifications to the citation.

Regarding Citation No. 9083289, which alleged a violation of 30 C.F.R. § 75.202(a), in the Secretary's original motion the rationale presented for the proposed penalty reduction for that citation stated only, "Respondent presented evidence that, based on their size, consistency, and location, the cited ribs would not have caused fatal injuries. In consideration of this evidence and the risks inherent in proceeding to a hearing, the Secretary agreed to modify the type of injury and reduce the penalty." Secretary's January 19, 2017 Motion to Approve Settlement at 3.

In the amended motion the Secretary presented the following regarding Citation No. 9083289:

The ribs cited in this citation were in a highly traveled area however, they were located on the belt side, thus miners would rarely be exposed to the conditions. Due to the location of the rib with respect to the belt, miners would not be directly exposed to the full rib should it fall. The belt would take the brunt of the rib fall. The penalty under the regular assessment criteria would have been \$2,282.00. Therefore, the Secretary believes Respondent's injury designation should be modified, the corresponding special assessment penalty markup reduced, and that the modification and reduction in penalty are consistent with his enforcement responsibility of the Mine Act.

Secretary's Amended Motion for Decision and Order Approving Settlement at 3-4.

The Secretary also requested that the gravity of this citation be modified from "fatal" to "permanently disabling." In light of this information, the Secretary proposed a settlement amount of \$3,225.00, rather than the initially proposed penalty of \$12,900.00.

Regarding Citation No. 9083153, which alleged a violation of 30 C.F.R. § 75.202(a), in the Secretary's original motion the rationale presented for the proposed penalty reduction for that citation stated only

[t]hough the cited condition was in a traveled area, Respondent presented evidence that this condition did not exist for an extended period of time. In consideration of this evidence, which slightly mitigates the negligence, and the risks inherent in proceeding to a hearing, the Secretary agreed to reduce the penalty.

Secretary's January 19, 2017 Motion to Approve Settlement at 3.

In the amended motion the Secretary presented the following regarding Citation No. 9083153:

This citation was issued in August 2015 due to visible deterioration of the ribs. On June 10, 2015, the Operator issued a companywide safety memo instructing miners to install additional rib bolts in the mains and on every corner. The Operator was taking measures to address the poor rib conditions. However, the state of this particular coal seam was such that the ribs were well-supported for an extended period of time even without rib bolts, but due to abutment pressure from longwall mining, the ribs could deteriorate quickly. The penalty under the regular assessment criteria would have been \$2,282.00. Therefore, the Secretary believes Respondent's negligence, while moderate, was somewhat less than the special assessment markup and that a reduction in penalty in this instant case is consistent with his enforcement responsibility of the Mine Act.

Secretary's Amended Motion for Decision and Order Approving Settlement at 4.

In conjunction with this new information, the Secretary proposed a settlement amount of \$6,513.00, rather than the initially proposed penalty of \$11,500.00.

Regarding Citation No. 9083292, which alleged a violation of 30 C.F.R. § 75.202(a), in the Secretary's original motion the rationale presented for the proposed penalty reduction for that citation stated only:

Respondent presented evidence that, based on its size and consistency, the cited rib would not have caused fatal injuries. Respondent also presented evidence that this condition did not exist for an extended period of time. In consideration of this evidence and the risk inherent in proceeding to a hearing, the Secretary agreed to modify the type of injury and reduce the penalty.

Secretary's January 19, 2017 Motion to Approve Settlement at 4.

In the amended motion the Secretary presented the following regarding Citation No. 9083292:

The rib was scaled down above the already sloughed out area, thus the rib fell on top of sloughed out area, where miners would not travel. In addition, this area was preshifted and the rib conditions did not exist during the preshift examination. The state of this particular coal seam was such that the ribs would appear well supported without rib bolts for an extended period of time, but as the longwall advanced, the ribs could deteriorate quickly, often within a few hours of mining. The condition of this rib deteriorated quickly due to longwall abutment pressure. The penalty under the regular assessment criteria would have been \$2,282.00. Therefore, the Secretary believes Respondent's injury designation should be modified and the corresponding special assessment penalty markup reduced. The Secretary also believes that Respondent's negligence, while moderate, was somewhat less than the special assessment markup and that the modification and reduction in penalty are consistent with his enforcement responsibility of the Mine Act.

Secretary's Amended Motion for Decision and Order Approving Settlement at 5.

The Secretary also requested that the gravity of this citation be modified from "fatal" to "permanently disabling." In light of this information, the Secretary proposed a settlement amount of \$4,324.00, rather than the initially proposed penalty of \$17,300.00.

Regarding Citation No. 9083154, the Respondent has agreed to pay the full proposed penalty of \$19,300.00, with no modifications. That citation alleged a violation of 30 C.F.R. § 75.223(a).

In further support of the Secretary's Motion for Reconsideration, he also stated,

As indicated in Exhibit B, the parties reached a settlement agreement two days before a hearing on the matter was set to commence. In reaching the settlement, the undersigned reviewed the Citations and inspectors notes, and engaged in extensive discovery with the Operator. The undersigned also spoke to the issuing inspectors at length and discussed the citations with the Operator during course of settlement negotiations.

Secretary's June 29 Motion for Reconsideration at 2.

Conclusion

As detailed above, the amended motion now provides significantly more factual information in support of the proposed penalty amounts and modifications.¹ Based upon the factual support offered in the amended motion to approve settlement, the Court has considered the representations submitted in this case and concludes that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act.

The settlement amounts are as follows:

<u>Citation No.</u>	<u>Proposed Penalty</u>	<u>Settlement Amount</u>
9083151	\$11,500.00	\$6,513.00
9083289	\$12,900.00	\$3,225.00
9083153	\$11,500.00	\$6,513.00
9083154	\$19,300.00	\$19,300.00
9083292	\$17,300.00	\$4,324.00
TOTAL:	\$72,500.00	\$39,875.00

WHEREFORE, the motion for approval of settlement is **GRANTED**.

It is **ORDERED** that Citation Nos. 9083289 and 9083292 be **MODIFIED** to from fatal to permanently disabling.

The Respondent is **ORDERED TO PAY** a penalty of **\$39,875.00** within 30 days of this decision.²

William B. Moran

William B. Moran
Administrative Law Judge

¹ Under Commission Procedural Rule 31(b), a motion to approve settlement must “include . . . facts in support of the amount of penalty agreed to in settlement.” 29 C.F.R. § 2700.31(b)(1).

² Payment should be sent to: MINE SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR, PAYMENT OFFICE, P.O. BOX 790390, ST. LOUIS, MO 63179-0390

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