

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
1331 Pennsylvania Avenue, NW, Suite 520N
Washington, DC 20004

October 26, 2017

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

v.

KEITH MILLER, employed by OAK
GROVE RESOURCES,

and

CHASE GUIN, formerly employed by
OAK GROVE RESOURCES,

and

WILLIAM EDWARDS, employed by OAK
GROVE RESOURCES,
Respondents.

CIVIL PENALTY PROCEEDINGS

Docket No. SE 2017-0092
A.C. No. 01-00851-428926 A

Docket No. SE 2017-0093
A.C. No. 01-00851-428927 A

Docket No. SE 2017-0094
A.C. No. 01-00851-428928 A

Mine: Oak Grove Mine

DISMISSAL ORDER

Before: Judge Feldman

These personal liability matters, brought pursuant to section 110(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 820(c) (“Mine Act” or “Act”), concern 104(d)(1) Citation No. 8520686 and 104(d)(1) Order No. 8520687 issued on April 26, 2013, at the Oak Grove Mine for impermissible coal dust accumulations and inadequate preshift examinations in violation of the Secretary’s mandatory safety standards in sections 75.400 and 75.360(a)(1), respectively.¹ 30 C.F.R. §§ 75.400, 75.360(a)(1).

¹ 104(d)(1) Citation No. 8520686 and 104(d)(1) Order No. 8520687, issued to Oak Grove Resources, were resolved by means of a Decision Approving Settlement issued on March 22, 2016. Docket Nos. SE 2014-147, SE 2014-231.

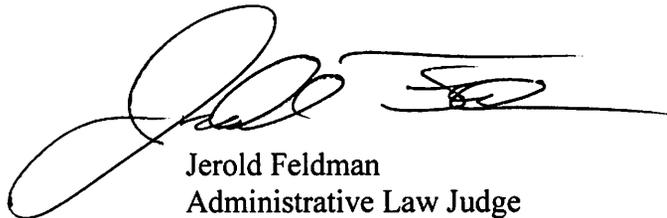
During the discovery phase of this proceeding, the Respondents sought to depose a Mine Safety and Health Administration (“MSHA”) official familiar with MSHA’s investigative procedures at its Technical Compliance and Investigation Office (“TCIO”) to determine the reason for the approximate four year interval between the issuance of the underlying citations and the filing of the subject civil penalty petitions on April 13, 2017. In so doing, the Respondents sought to obtain relevant evidence on whether the subject petitions for civil penalty were filed within a “reasonable time” after issuance of a citation or termination of a relevant inspection or investigation, as contemplated by section 105(a) of the Act.² 30 U.S.C. § 815(a).

On June 20, 2017, the Secretary filed a Motion for Protective Order seeking to preclude such discovery, arguing that the information was irrelevant and/or protected by privilege. The Secretary’s request for a protective order was denied. Order Denying Secretary’s Motion for Protective Order, 39 FMSHRC ___ (Sept. 13, 2017).

On October 4, 2017, the Secretary filed a Notice Vacating Violations and Agreement of the Parties, that I construe as a motion to dismiss. Specifically, the Secretary has represented that he wishes to vacate 104(d)(1) Citation No. 8520686 and 104(d)(1) Order No. 8520687 with respect to each of the captioned respondents, and that each party agrees to bear its own fees and other expenses incurred in these matters.

ORDER

Accordingly, **IT IS ORDERED** that the Secretary’s request for dismissal **IS GRANTED**. Consequently, the captioned matters **ARE DISMISSED**.



Jerold Feldman
Administrative Law Judge

² Although section 105(a) addresses the timeframe for filing petitions for civil penalties filed against mine operators under section 104(a), a number of ALJ’s have found it appropriate to apply the “reasonable time” provision in section 105(a) to personal liability civil penalties proposed pursuant to section 110(c). *See, e.g., White*, 38 FMSHRC 1881 (July 2016) (ALJ); *Dushane*, 38 FMSHRC 1834 (July 2016) (ALJ); *Trujillo*, 35 FMSHRC 1485 (May 2013) (ALJ); *Dyno Nobel East-Central Region*, 35 FMSHRC 265 (Jan. 2013) (ALJ).

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