

CCASE:  
SOL (MSHA) V. SUNSHINE MINING  
DDATE:  
19790327  
TTEXT:

~1

Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)  
Office of Administrative Law Judges

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

Civil Penalty Proceeding

Docket No. DENV 78-569-PM(A)  
A.O. No. 10-00089-05002

v.

Sunshine Mine

SUNSHINE MINING COMPANY,  
RESPONDENT

DECISION AND ORDER

Appearances: Joseph Walsh, Trial Attorney, Department of Labor,  
Office of the Solicitor, Arlington, Virginia, for  
the petitioner;  
Piatt Hull, Esquire, Wallace, Idaho, for the  
respondent.

Before: Judge Kennedy

On March 21, 1979, the captioned matter came on for an  
evidentiary hearing in Spokane, Washington. After carefully  
reviewing and considering the testimony and documentary evidence,  
the Presiding Judge found that the Secretary had failed to  
establish by a preponderance of the evidence that:

1. On the night shift on April 11 or the day shift on  
April 10, the operator endangered the safety of the  
miners by any lack of diligence or due care in the  
furnishing of ground support on the hanging wall of the  
5215 Stope.
2. That the violation of 30 C.F.R. 57.3-22 charged  
did not, therefore, occur.

Accordingly, it was ordered that the petition for assessment of a  
civil penalty be dismissed with prejudice.

~2

The premises considered, it is ORDERED that the bench decision and order of March 21, 1979, be, and hereby are, CONFIRMED and that the imminent danger closure order 347008 issued April 12, 1978 be, and hereby is, VACATED.

Joseph B. Kennedy  
Administrative Law Judge