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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 78-568-PM(A)
A.O. No. 10-0089-05003

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 hearing the
witnesses and considering the documentary evidence the Presiding
Judge rendered a bench decision in which he concluded that on the
basis of a preponderance of the credible evidence:

1. The ground on the hanging wall in the J-8 Stope was
loose and inadequately supported on the afternoon of
April 6, 1978, a violation of the mandatory safety
standard set forth in 30 C.F.R. 57.3-22.
2. That the violation was extremely serious in that it
posed a real and potential danger to life and limb.
3. That the condition was one that was known to the
operator based on the imputed knowledge of Mr. Rudd,
the Production Foreman responsible for the J-8 Stope.
4. That Mr. Rudd's failure to correct the condition was
the result of a high degree of ordinary negligence.

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Thereafter and after considering the other statutory criteria, including the fact that this was first offense, the Judge determined that the amount of the penalty warranted and that best calculated to deter future violations and ensure voluntary compliance was \$5,000.00. It was ordered, therefore, that for the violation found the Sunshine Mining Company pay a penalty of \$5,000.00 within ten (10) days.

The premises considered, it is ORDERED that the bench decision and order of March 21, 1979, be, and hereby are, CONFIRMED and that respondent pay a penalty of \$5,000.00 on or before Saturday, March 31, 1979.

Joseph B. Kennedy
Administrative Law Judge