

CCASE:
KERR COAL V. SOL (MSHA)
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

KERR COAL COMPANY,
APPLICANT

Application for Review

v.

Docket No. DENV 78-507
Order No. 389989; June 6, 1978

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

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

Civil Penalty Proceeding

Docket No. DENV 79-285-P
A.C. No. 05-02660-03004

v.

Marr Preparation Plant

KERR COAL COMPANY,
RESPONDENT

DECISION

Appearances: Warren L. Tomlinson, Esq., and Deborah Friedman,
Esq., Holland & Hart, Denver, Colorado, for
Kerr Coal Company;
Edward H. Fitch, Esq., Office of the Solicitor,
Department of Labor, for MSHA.

Before: Administrative Law Judge Michels

Docket No. DENV 78-507 in the above-captioned proceedings involves an application for review of Withdrawal Order No. 389989 and the underlying Citation No. 389988 issued at Applicant's Marr Preparation Plant for an alleged violation of section 109(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 819(a). The pertinent part of that section of the Act requires that "[a]t each coal or other mine there shall be maintained an office with a conspicuous sign designating it as the office of such mine."

Citation No. 389988 was issued on June 5, 1978, by MSHA inspector Harvey Padgett, who alleged that there was no sign designating the office at Applicant's preparation plant. On June 6, 1978, Inspector

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Padgett issued Order No. 389989 pursuant to section 104(b) of the Act, alleging Applicant's failure to abate the cited condition. The cited condition was abated on June 6, 1978, following issuance of the withdrawal order.

Pursuant to section 105(d) of the Act, Applicant filed its application for review of the withdrawal order and underlying citation with the Federal Mine Safety and Health Review Commission.

A hearing was held on January 17, 1979, in Denver, Colorado, at which both parties were represented by counsel. Applicant's counsel filed a posthearing brief on February 21, 1979.

On January 30, 1979, after the hearing discussed above, but before a decision had been issued, MSHA filed a petition for the assessment of a civil penalty in Docket No. DENV 79-285-P based on the violation alleged in Citation No. 389988, the same citation involved in DENV 78-507. In answer thereto, Kerr Coal Company filed a motion requesting that the civil penalty case be stayed until a decision was issued in DENV 78-507.

Thereafter, on March 22, 1979, MSHA filed a motion to withdraw the petition for assessment of a civil penalty in DENV 79-285-P. As grounds for this motion, MSHA counsel asserted: (a) the same violation was the subject of Application for Review Docket No. DENV 78-507; (b) Citation No. 389988 was issued in error; (c) both Citation No. 389988 and Withdrawal Order No. 389989 had been vacated.

On March 26, 1979, Kerr Coal Company filed a motion to withdraw its application for review in DENV 78-507 in which it advised that on March 13, 1979, MSHA inspector Stephen Pryor issued Citation No. 389988-1, in which he vacated both Citation No. 389988 and Order No. 389989, stating "[a] review of citation No. 389988 dated 5 June 1978 determines the citation was issued in error, also subsequent action of a 104 B order No. 389989 is cancelled." A copy of Citation No. 389988-1 was attached to this motion.

Under the circumstances outlined above, I hereby find that good cause has been shown for granting both motions. Accordingly,

In Docket No. DENV 78-507, it is ORDERED that Applicant's motion to withdraw its application for review is hereby GRANTED. That proceeding is hereby DISMISSED.

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In Docket No. DENV 79-285-P, it is ORDERED that Petitioner's motion to withdraw its petition for the assessment of a civil penalty is GRANTED. That proceeding is hereby DISMISSED with prejudice.

Franklin P. Michels
Administrative Law Judge