

CCASE:  
SOL (MSHA) V. RANGER FUEL  
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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

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

Civil Penalty Proceeding

Docket No. WEVA 80-121  
A.O. No. 46-04581-03020

v.

Beckley No. 2 Mine

RANGER FUEL CORPORATION,  
RESPONDENT

ORDER OF DISMISSAL

On February 12, 1980, I issued a Denial of Motions for Summary Decision, Denial of Motion for Stay, and Prehearing Order. I denied the parties' motion for summary decision on the ground that there was a genuine dispute between the parties as to the type of inspection which was involved in this case. The question presented is the entitlement of a certain miner to "walkaround compensation" under Section 103(f) of the Federal Mine Safety and Health Act of 1977 (the Act).

In a response to my Prehearing Order filed on April 3, 1980, Petitioner resolved this dispute stating, "The parties have agreed that the inspection involved was an accident investigation inspection, that it was not a 103(i) inspection and that it was not part of a regular quarterly inspection."

Petitioner then argued that the inspection in this case is "factually and legally distinguishable" from the types of inspections involved in Secretary of Labor, Mine Safety and Health Administration (MSHA) v. The Helen Mining Company, Docket No. PITT 79-11-P, 1 FMSHRC Decs. 1796 (1979), appeal docketed, No. 79-2537 (D.C. Cir., Dec. 21, 1979) and Kentland-Elkhorn Coal Corporation v. Secretary of Labor, Mine Safety and Health Administration (MSHA), Docket No. PIKE 78-399, 1 FMSHRC Decs. 1833 (1979), appeal docketed, No. 79-2536 (D.C. Cir., Dec. 21, 1979)

I do not agree. In Helen Mining, the Commission held that Section 103(f) does not require operators to pay a miners' representative for the time he spends accompanying a mine inspector during a "spot" inspection required by Section 103(i) of the Act. In Kentland-Elkhorn, the Commission made a similar holding with respect to time spent accompanying a mine inspector during a special electrical inspection. In both cases, the Commission relied upon a statement made by Congressman Perkins during Congress' consideration of what was to become the Act. Congressman Perkins stated in part that, "it is the intent of the committee to require an opportunity to accompany the inspector at no loss of pay only for the regular inspections to be made by MSHA personnel at least four times a year in the case of

underground mines, and two times per year in the

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case of surface mines. The inspections in Helen Mining and Kentland-Elkhorn did not fall into this category, and accordingly the Commission denied walkaround compensation. While an accident investigation inspection has apparently not been specifically ruled on by the Commission in a walkaround case, I believe that Congressman Perkins' statement, upon which the Commission relied, mandates denial of compensation in this situation as well.

Finally, although Helen Mining and Kentland-Elkhorn have been appealed to the United States Court of Appeals for the District of Columbia Circuit, I do not believe this case should be held in abeyance while the court cases are pending. See: my comments in the February 12 Order in this case.

ORDER

This case is DISMISSED without prejudice.

Edwin S. Bernstein  
Administrative Law Judge