

CCASE:

SOL (MSHA) V. MULZER CRUSHED SONE

DDATE:

19801006

TTEXT:

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. LAKE 80-201-M  
A.O. No. 12-01423-05002

v.

Derby UG Quarry

MULZER CRUSHED STONE CO.,  
RESPONDENT

DECISION ON REMAND

On September 29, 1980, the Commission remanded this case to me for the purpose of reconsidering my prior decision of September 3, 1980, affirming one citation and assessing a civil penalty in the amount of \$75. The case was remanded after a finding by the Commission that the respondent was improperly denied an opportunity to submit a post-hearing brief prior to the issuance of my decision.

The Commission and the respondent are correct in their assertions that my decision of September 3, 1980, issued prior to the filing of respondent's written brief on September 11, 1980. This was an oversight on my part, and after now reviewing and considering the arguments advanced in writing by the respondent in support of its case, I conclude and find that my prior decision should be re-affirmed. Accordingly, my findings and conclusions made in this case on September 3, 1980, including the decision affirming the citation and imposing a civil penalty of \$75 stands as my final decision in this case.

It seems clear to me from the record in this case that the arguments advanced by the respondent in its brief of September 11th are the same as those made on the record during the course of the hearing (Tr. 143-158). Further, my findings and conclusions concerning a violation of 30 CFR 57.6-177, include a discussion of the position taken by the parties with respect to that violation, and clearly indicate my consideration of the arguments advanced by the respondent in support of its case (pgs. 6-10, decision of September 3, 1980). After reviewing respondent's written arguments in its brief, I cannot conclude that respondent has advanced any additional arguments which would warrant any change in my prior findings and conclusions concerning the factual and legal arguments

~2852

advanced by the respondent in support of its case. As noted by me several times during the hearing, respondent's arguments, for the most part, go to questions of gravity and negligence rather than to an absolute defense of the citation issued in this case. As for the factors of gravity and negligence, they were given due consideration by me in the course of my decision and are reflected by the civil penalty assessed by me in this case.

In view of the foregoing, I cannot conclude that respondent has been prejudiced by my hasty issuance of the decision in advance of the actual filing of respondent's brief. Respondent's position and arguments made at the hearing, as reflected in the transcript, were carefully considered by me in the course of the decision, and as noted therein, were considered by me in the course of my findings and conclusions, both as to the facts developed and the legal interpretations and applications of the cited mandatory safety standard which was in issue.

ORDER

My previous decision of September 3, 1980, as well as my order directing payment of a civil penalty of \$75 are re-affirmed as my final decision in this case.

George A. Koutras  
Administrative Law Judge