

CCASE:  
SOL (MSHA) v. GOLD SEEKERS  
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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. WEST 80-216-M

v.

A/O NO. 50-01294-05001 R

GOLD SEEKERS, (EAST FORK CREEK  
MINING, TOM WILLIAMS),  
RESPONDENT

Mine: Gold Leaf

Appearances: Marshall Salzman, Esq., Office of the Solicitor,  
United States Department of Labor, 11071 Federal  
Building, 450 Golden Gate Avenue,  
San Francisco, California 94102  
for the Petitioner

Before: Judge Virgil E. Vail

DECISION AND ORDER ASSESSING DEFAULT PENALTY

STATEMENT OF THE CASE

On August 3, 1979, the respondent was issued citation number 354606 (FN.1) for his refusal to allow federal mine inspectors entry to the premises for the purpose of conducting an inspection. The inspectors returned to the mine the following day and Mr. Williams again refused them entry to the mine. A second citation, number 351915, was issued on August 4, 1979, charging respondent with violating section 104(b) of the Federal Mine Safety and Health Act of 1977 (hereinafter referred to as the Act).

The Secretary of Labor filed a proposal for assessment of civil penalty on March 21, 1980, alleging that respondent had violated sections 104(a) and (b) of the Act. Tom Williams filed an answer to the Secretary's proposal on June 16, 1980 and the case was then forwarded to the undersigned.

A hearing was scheduled in Ankorage, Alaska for October 22, 1980. The respondent was sent two notices of the hearing. The amended notice of hearing was sent by certified mail and signed for by Mr. Williams. Despite these notifications, Mr. Williams failed to appear, send a duly authorized representative or notify the undersigned that he would be unable to attend the hearing. The undersigned, counsel for the petitioner and petitioner's witnesses all traveled to Ankorage, Alaska and were prepared to proceed with the hearing as previously scheduled.

On November 21, 1980, an Order to Show Cause was sent by certified mail to Mr. Williams, granting him 20 days to show cause why the proposed civil penalty should not be summarily entered as a final order. Although respondent received the order, he has failed to file a response. Therefore, I find the respondent to be in default. 29 C.F.R. 2700.63(b).

PENALTY ASSESSMENT

I find that the gravity and negligence of the violation were of a serious nature. Respondent's refusal to allow an inspection is viewed as an attempt on his part to totally circumvent the purpose of the Act. Furthermore, the fact that the inspectors were at the mine site in order to investigate a written complaint of safety hazards at the mine adds to the seriousness of the respondent's failure to allow them entry. There is nothing in the record that indicates that the imposition of the penalty will affect the respondent's ability to continue in business.

The proposed penalty was \$200.00. Under Rule 29(b) a Judge is not bound by the Secretary's proposal. Further, in view of the respondent's actions in this matter and obvious refusal to comply with the provisions of the Act, I find that a penalty of \$500.00 is appropriate.

ORDER

It is hereby ORDERED that respondent pay the penalty of \$500.00 within thirty (30) days from the date of this decision.

Virgil E. Vail  
Administrative Law Judge

AA

(FOOTNOTES START HERE.)

~FOOTNOTE\_ONE

1 Citation number 354606 states that, "Tom Williams, leaser (sic) of the claim refused to allow Thomas Usselman and Vern

Boston, authorized representatives of the Secretary, entry on to the Gold Leaf mining claim for the purpose of investigating a written complaint of safety hazards in existence and conducting an inspection pursuant to 103(a) of the Act.