FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

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SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner	:	Civil Penalty Proceeding Docket No. CENT 81-40 A/O No. 03-01401-030088
v.	:	Bradley Stephens #1 Mine
AEARTH DEVELOPMENT, INC., Respondent	:	

DECISION

Appearances: Eloise Vellucci, Esq., Office of the Solicitor, U.S. Department of Labor, Dallas, Texas, on behalf of Petitioner
Michael Walker, President, Aearth Development, Inc., Little Rock, Arkansas, for Respondent.

Before: Judge Stewart

The above-captioned case is a civil penalty proceeding brought pursuant to section 110 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (hereinafter, the Act). The hearing in this matter was held on May 13, 1981, in Fort Smith, Arkansas.

Two orders pursuant to section 104(d)(l) of the Act were at issue in this proceeding. Both orders were issued by Inspector Lester Coleman'on July 8, 1980, for alleged violations of 30 CFR 77.1710(e). Section 77.1710(e) requires that each employee working in a surface coal mine shall be required to wear suitable protective footwear. In both instances, it was established that mine management knew that these two employees were not wearing protective footwear. Michael Walker asserted at the hearing that management had informed both empioyees that protective footwear was required. Although the Respondent's employees were expected to pay for the shoes themselves, Respondent had arranged for credit to be extended to those employees who could not afford to pay for the shoes immediately. It is also evident that management permitted these employees to continue work even though they had not obtained safety shoes. Respondent notified its employees of the requirement that they wear protective footwear, but did not enforce the requirement. In so doing, Respondent violated Section 77.1710(e).

Respondent demonstrated a moderate degree of negligence in permitting these two employees to work without protective footwear. Management knew that the men were not wearing safety shoes but, as the result of misinformation provided by a state inspector, believed that hard-toed shoes-were required by law only if the employee was working under hazardous conditions. Furthermore, both individuals had been apprised of the requirement that they wear protective footwear and provision had been made for them to procure it.

The inspector issued Order No. 793090 upon observing a laborer working in the pit while wearing only ordinary leather shoes. The laborer was cleaning coal with a shovel. The spoil bank was located immediately adjacent to the pit. The spoil was comprised of loose material and contained debris which ranged in size up to two or three feet in diameter. The inspector was concerned that material would fall from the spoil bank into the pit and strike the laborer. If a large enough piece of material struck the laborer on the foot, it could have caused bruises or broken bones.

The testimony of Michael Walker, president of Aearth, established that the height of the spoil bank above the floor of the pit was approximately 39 feet. The pit itself was estimated by the inspector to have been approximately 65 feet wide and 150 feet long. The laborer was working approximately 35 feet away from the edge of the spoil at the time he was observed by the inspector. The inspector believed that the laborer was close enough to be struck by debris falling from the spoil pile. Moreover, the laborer's responsibilities also brought him into the area of the pit immediately adjacent to the spoil bank.

The inspector issued Order No. 793091 after he observed a laborer wearing non-steel toed boots while assisting in the repair of a front-end loader. The individual involved was a trainee equipment-oiler. When observed, the laborer was helping to remove a turbocharger from the loader. The turbocharger was approximately 18 inches by 24 inches and weighed 35 to 40 pounds. Michael Walker admitted that if it had dropped on the laborer's foot, it would have caused injury. He suggested, however, that the laborer would not have lifted the turbocharger himself but would have used a boom to do so, thereby reducing the likelihood that it would have fallen onto his foot.

At the outset of the hearing, the parties stipulated that the information presented on the conference worksheet concerning Respondent's history of violations and size was accurate. The parties agreed that Respondent's history of violations was minimal and that its mine was small. Michael Walker admitted that the ability of Respondent to continue in business would not be adversely affected by any penalty assessed herein.

The parties proposed at the conclusion of the hearing to settle this case for $100 per violation. The assessment proposed for each violation had been $300. On the basis of the testimony given and evidence adduced at the hearing, the settlement was approved at that time and Respondent was ordered to pay the sum of $200 within 20 days of the hearing.

The approval of settlement is hereby AFFIRMED.

ORDER

IT IS ORDERED that, if it has not yet done so, Respondent pay the sum of $200 to Petitioner within 30 days of the date of this decision.

Forrest E. Stewart
Administrative Law Judge

Distribution:

Eloise Vellucci, Esq., Office of the Solicitor, U.S. Department of Labor, 555 Griffin Square Building, Suite 501, Dallas, TX 75202 (Certified Mail)

Michael Walker, President, Aearth Development, Inc., P. 0. Box 3514, Little Rock, AR 72203 (Certified Mail)