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SOL (MSHA) V. FREEMAN UNITED COAL  
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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. LAKE 82-89  
A.C. No. 11-00599-03084

v.

Orient No. 6 Mine

FREEMAN UNITED COAL MINING  
COMPANY, A SUBSIDIARY OF  
MATERIAL SERVICE CORP.,  
RESPONDENT

DECISION

Appearances: Mark A. Holbert, Esq., Office of the Solicitor,  
U.S. Department of Labor, Chicago, Illinois,  
for Petitioner Harry M. Coven, Esq., Gould &  
Ratner, Chicago, Illinois, for Respondent

Before: Administrative Law Judge Broderick

STATEMENT OF THE CASE

This is a civil penalty proceeding in which Respondent is charged with a violation of 30 C.F.R. 50.20(a) because of its failure to report to MSHA an occupational injury occurring to one of its employees. The case has been submitted on a written stipulation of facts, and both parties have filed memoranda in support of their respective positions. Based on the entire record and considering the contentions of the parties, I make the following decision:

FINDINGS OF FACT

1. Respondent is the operator of a coal mine in Jefferson County, Illinois, known as the Orient No. 6 Mine.
2. The operation of said mine affects interstate commerce and produces products which enter interstate commerce.

~506

3. There are approximately 497 employees at the subject mine and its annual production is 980,116 tons of coal. The production of all Respondent's mines is approximately 6,559,662 tons of coal annually.

4. During the 24 months prior to the issuance of the citation involved herein, 330 violations were assessed at the subject mine.

5. The imposition of a penalty in this case would not impair Respondent's ability to continue in business.

6. On February 18, 1982, Fred Albers, a miner at the subject mine reported to work at approximately 11:00 p.m. The regular starting time for his shift was 12:01 a.m., February 19, 1982.

7. After arriving at the mine site on February 18, 1982, while putting on his work boots in Respondent's wash house, Albers experienced pain in his back.

8. He was admitted to the Pinckneyville Community Hospital, Pinckneyville, Illinois, on February 19, 1982. The diagnosis was acute lumbosacral strain. He remained in the hospital and was treated with physiotherapy and medication until discharged on February 24, 1982.

9. Albers returned to his regular work on March 10, 1982.

10. The back pain which Albers experienced was not caused by "any external source, blow, contact, impact, stress, or accident."

11. Respondent did not report the occurrence of the event described in Findings of Fact No. 7 and 8, on MSHA Form 7000-1, within 10 working days of its occurrence.

12. On March 25, 1982, a citation was issued to Respondent alleging a violation of 30 C.F.R. 50.20(a) for its failure to complete and mail to MSHA Form 7000-1 for the occupational injury occurring on February 18, 1982, and involving Fred Albers.

13. The condition was abated and the citation terminated on March 25, 1982, when Form 7000-1 was completed and mailed to MSHA reporting and describing the incident described in Findings of Fact No. 7 and 8.

REGULATORY PROVISIONS

30 C.F.R. 50.2(e) provides:

(e) "Occupational injury" means any injury to a miner which occurs at a mine for which medical treatment is administered, or which results in death or loss of consciousness, inability to perform all job duties on any day after an injury, temporary assignment to other duties, or transfer to another job.

30 C.F.R. 50.20(a) provides:

50.20 Preparation and submission of MSHA Form 7000-1--Mine Accident, Injury, and Illness Report.

(a) Each operator shall maintain at the mine office a supply of MSHA Mine Accident, Injury, and Illness Report Form 7000-1. These may be obtained from MSHA Metal and Nonmetallic Mine Health and Safety Subdistrict Offices and from MSHA Coal Mine Health and Safety Subdistrict Offices. Each operator shall report each accident, occupational injury, or occupational illness at the mine. The principal officer in charge of health and safety at the mine or the supervisor of the mine area in which an accident or occupational injury occurs, or an occupational illness may have originated, shall complete or review the form in accordance with the instructions and criteria in 50.20-1 through 50.20-7. If an occupational illness is diagnosed as being one of those listed in 50.20-6(b)(7), the operator must report it under this part. The operator shall mail completed forms to MSHA within ten working days after an accident or occupational injury occurs or an occupational illness is diagnosed. When an accident specified in 50.10 occurs, which does not involve an occupational injury sections A, B, and items 5 through 11 of section C of Form 7000-1 shall be completed and mailed to MSHA in accordance with the instructions in 50.20-1 and criteria contained in 50.20-4 through 50.20-6.

Whether the incident of February 18, 1982, involving miner Fred Albers, described in Findings of Fact 7 and 8 was an occupational injury and reportable under 30 C.F.R. 50.20(a)?

#### CONCLUSIONS OF LAW

1. Respondent is subject to the provisions of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., in the operation of Orient No. 6 Mine and the undersigned Administrative Law Judge has jurisdiction over the parties and subject matter of this proceeding.

2. The incident of February 18, 1982, involving miner Fred Albers, described in Findings of Fact 7 and 8 was an occupational injury as that term is defined in 30 C.F.R. 50.2(e).

#### DISCUSSION

The definition of occupational injury in the regulation has three factors: (1) it is an injury to a miner; (2) it occurs at a mine; and (3) medical treatment is administered or death, loss of consciousness or disability results from the injury. The facts stipulated to here clearly show that the injury (lumbosacral strain) (1) was sustained by a miner (2) at a mine and (3) resulted in medical treatment and disability.

Although the facts clearly fit the definition and the definition is controlling, the conclusion is also supported by a consideration of an analogous field of law--workers compensation. An "injury by accident" is shown under most state workers' compensation laws if an employees' usual duties cause a pathological condition such as a back strain. 1B LARSON, THE LAW OF WORKMENS COMPENSATION 38.00 (1982). In the recent case of Memorial Medical Center v. Industrial Cowin, 72 Ill. 2d 275, 381 N.E. 2d 289 (1978), the Illinois Supreme Court upheld a compensation award to an employee who sustained a back injury when bending to clean a door. See also Wheatley v. Adler, 407 F.2d 307 (D.C. Cir. 1968) (the Longshoremen & Harbor Workers Compensation Act). With respect to the question of the occupational nature of the injury, under workers compensation laws, an employee having fixed hours and place of work is in the course of his employment going to and from work while on the employer's premises. 1 LARSON, supra, 15.11. Certainly changing into work clothes on the premises of the employer is in the course of employment.

3. Since the incident described in Findings of Fact 7 and 8 was an occupational injury, Respondent was required to report it under 30 C.F.R. 50.20(a) and failure to do so was a violation of the standard.

~509

4. The violation was not shown to be serious.

5. Respondent should have been aware of the violation, since it was aware of the injury. Therefore, the injury was the result of Respondent's negligence.

6. An appropriate penalty for the violation, considering the criteria in 110(i) of the Act is \$100.

ORDER

Based on the above findings of fact and conclusions of law, Respondent is ORDERED to pay the sum of \$100, within 30 days of the date of this order, for the violation found herein.

James A. Broderick  
Administrative Law Judge