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SOL (MSHA) V. RANDALL & BLAKE
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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

v.

RANDALL & BLAKE OF
OKLAHOMA, INC.,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. CENT 83-64
A.C. No. 34-01010-03503

Danger Creek Strip

DECISION

Before: Judge Kennedy

This matter is before me on the Secretary's unopposed motion for summary decision. Rule 64 of the Commission's rules provides a motion for summary decision shall be granted if (1) there is no genuine issue as to any material fact; and (2) that the moving party is entitled to summary decision as a matter of law.

On November 9, 1983, the Secretary filed a petition for assessment of a civil penalty in the amount of \$98.00 for a single violation of 30 C.F.R. 77.1301(b) of the mandatory safety standards for surface mines. The condition cited was storage of detonators and explosives in the same magazine. The operator's answer, filed December 27, 1983, failed to deny the facts as to the violation charged but raised as a plea in bar the operator's petition in bankruptcy filed December 13, 1982.

Thereafter, the Secretary filed a motion for summary decision on the ground that (1) the fact of violation must be deemed admitted and (2) the plea in bankruptcy is no bar to adjudication of respondent's liability for the violation. The Secretary's motion was filed January 6, 1984 and is accompanied by a certificate of service of same on respondent's trustee on January 3, 1984. The operator failed to respond.

Under 11 U.S.C. 362(b)(4) and (5) of the Bankruptcy Code the filing of a petition in bankruptcy does not stay

~254

a civil penalty proceeding. Compare Leon's Coal Company, 4 FMSHRC 572 (1982). Further, under 11 U.S.C. 523(a)(7) fines, penalties or forfeitures that the debtor owes the government as the result of the exercise of lawful regulatory power are not subject to discharge by the bankruptcy court. See In Re Tauscher, 7 B.R. 918 (D.Wisc. 1981).

Accordingly, it is ORDERED that the motion for summary decision be, and hereby is, GRANTED. It is FURTHER ORDERED that the operator pay the amount of the penalty assessed, \$98.00, on or before Friday, February 17, and that subject to payment the captioned matter be DISMISSED.

Joseph B. Kennedy
Administrative Law Judge