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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.

OZARK-MAHONING COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. LAKE 84-96-M
A.C. No. 11-02667-05501

Denton Mine

Appearances: Miguel J. Carmona, Esq., Office of the
Solicitor, U.S. Department of Labor, Chicago,
Illinois, for the Petitioner;
Victor Evans and W.G. Stacy, Ozark-Mahoning
Company, Rosiclare, Illinois, for the
Respondent.

DECISION

Before: Judge Melick

This case is before me upon the petition for assessment of civil penalty filed by the Secretary of Labor pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act," for one violation of the regulatory standard at 30 C.F.R. 57.15-4. The general issue before me is whether the Ozark-Mahoning Company (Ozark-Mahoning) has violated the cited regulatory standard and, if so, whether that violation was of such a nature as could significantly and substantially contribute to the cause and effect of a mine safety or health hazard i.e. whether the violation was "significant and substantial." If a violation is found, it will also be necessary to determine the appropriate civil penalty to be assessed in accordance with section 110(i) of the Act.

The Citation at bar (Number 374906) alleges as follows:

Two employees were observed operating jackleg percussion type drills and were not wearing any type of eye protection. The employees were working in the south end drift of the mine. Flying rock chips from collaring holes while drilling could result in an injury to the eyes.

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The cited standard provides that "all persons shall wear safety glasses, goggles, or face shields or other suitable protective devices when in or around an area of a mine or plant where a hazard exists which could cause injury to unprotected eyes."

It is undisputed that on May 24, 1984, two Ozark-Mahoning employees, Dennis Darell and Wendell Hicks, were collaring drill holes (the process of starting the drill bit into a hole) and drilling without wearing safety glasses or other eye protection. According to the undisputed testimony of Inspector George Laumondiere of the Federal Mine Safety and Health Administration (MSHA), rock fragments and chips fly out from the face while drilling and particularly while collaring holes. He therefore concluded that the miners were likely to suffer serious eye injuries or the loss of an eye. Laumondiere had himself once suffered eye injuries losing five days of work when he was a miner working with a drill under similar circumstances without eye protection.

It is not disputed that safety glasses were available but the decision to wear those glasses was essentially left to each miner. One miner understood he was to wear them whenever "there is any danger of getting things in your eyes" but another miner had never received any instructions relating thereto. There is no evidence that any miner had ever been disciplined for not wearing safety glasses.

Both Darrell and Hicks admitted that during the drilling process they did occasionally get objects in their eye but neither had yet suffered any serious injuries. In addition both miners felt that it was a greater hazard to wear protective glasses because the lens became foggy, greasy and dirty in the mine atmosphere thereby affecting vision during critical operations. (FOOTNOTE.1)

By way of defense Ozark-Mahoning cites statements attributed to unidentified MSHA inspectors that it was not necessary to wear safety glasses "all of the time" and evidence that the inspectors themselves do not "always" wear safety glasses while underground. The purported defenses are irrelevant however since the violation herein relates specifically to the failure of drillers to wear safety glasses during drilling operations. The violation is accordingly proven as charged. In light of the seriousness of the

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potential injuries and the undisputed evidence of the probability of such injuries I also find that violation was "significant and substantial". Secretary v. Mathies Coal Company, 6 FMSHRC 1 (1984).

In assessing the penalty in this case I have also considered that the operator is of moderate size and has no reported history of violations. While Inspector Laumandiere testified that the violation was abated when the mine superintendant obtained safety glasses for the drillers the evidence shows that the miners have continued to perform drilling operations without the use of safety glasses and without any disciplinary action by management. Under the circumstances it appears that Respondent has in fact not abated the violative conditions. In addition, in light of the clear absence of past enforcement of the cited standard by the mine operator I find that the violation was due to operator negligence. Under the circumstances I find that a penalty of \$350 is appropriate.

ORDER

Ozark-Mahoning Company is hereby ordered to pay a civil penalty of \$350 within 30 days of the date of this decision.

Gary Melick
Administrative Law Judge

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FOOTNOTES START HERE:-

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1 Ozark-Mahoning does not however raise a "greater hazard" defense based on this evidence.