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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. PENN 85-236
A.C. No. 36-02713-03509

v.

Frenchtown Strip Mine

POWER OPERATING COMPANY, INC.,
RESPONDENT

SUMMARY DECISION

Before: Judge Koutras

Statement of the Case

This case concerns a civil penalty proposal initiated by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking a civil penalty assessment of \$20 for an alleged violation of the reporting requirements of 30 C.F.R. 50.20(a). The alleged violation is stated in a section 104(a) citation served on the respondent's representative by an MSHA inspector on April 15, 1985.

The matter was scheduled for a hearing on the merits. However, the hearing was subsequently cancelled after the parties agreed to submit the matter to me for summary decision pursuant to Commission Rule 64, 29 C.F.R. 2700.64. The parties have filed cross-motions for summary decision, with supporting stipulations and arguments.

Issue

The issues presented here is whether the respondent violated the requirements of 30 C.F.R. 50.20(a), and if so, the appropriate civil penalty which should be assessed taking into account the requirements of section 110(i) of the Act.

Applicable Statutory and Regulatory Provisions

1. The Federal Mine Safety and Health Act of 1977; Pub.L. 85Ä164, 30 U.S.C. 801 et seq.
2. Section 110(i) of the 1977 Act, 30 U.S.C. 820(i).
3. Commission Rules, 29 C.F.R. 2700.1 et seq.
4. 30 C.F.R. 50.20(a).

Discussion

Section 104(a) Citation No. 2403692, issued on April 15, 1985, cites a violation of 30 C.F.R. 50.20(a), and the cited condition or practice is stated as follows:

The operator has omitted on Section A, the company name. Section C, No. 9, the condition contributing to the accident. No. 10, equipment involved. No. 11, name of witness to accident, if any, on the Mine Accident and Injury and Illness Report, MSHA Form 7000Ä1, for accident that occurred on 3Ä21Ä85.

The facts in this case are not in dispute. The parties have stipulated that on March 21, 1985, at 9:30 a.m., Mr. John J. Podliski, a miner employed by the respondent, slipped while on duty and bruised his right knee. He continued to work the remainder of the work day on March 21, but was off from work on March 22, for reasons associated with the injury he sustained.

The parties stipulated that the respondent filed the required accident report with MSHA on March 25, 1985, and there is no dispute that when it was filed the company name was omitted from Section A, line two of the report, and that items 9, 10, 11 of Section C were left blank. Item 9 is the space provided for the full description of the conditions contributing to an accident; item 10 is the space for describing any equipment involved in an accident; and item 11 is the space for listing the name of any witness. The citation was issued because of these omissions.

In support of the citation, petitioner argues that the reporting requirements of 30 C.F.R. Part 50 implements sections 103(a) and (b) of the Act, and are intended to achieve the statutory objective or acquisition and analysis of accident, injury, and illness data for the purpose of reducing

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mine safety and health hazards. Petitioner states that the reporting requirements established by Part 50 provide a mechanism for the identification of those aspects of mining which need intensified attention through health and safety regulation. 44 Fed.Reg. 52827 (1979). Part 50 requires the reporting of all occupational injuries irrespective of whether there exists a causal nexus between the miner's work and the injury sustained. Secretary of Labor v. Freeman United Coal Mining Company, 3 MSHC 1447 (1983).

The petitioner points out that the form in question requires the respondent to fully describe the conditions contributing to an occupational injury and to quantify the resulting damage or impairment. Petitioner maintains that the failure of the respondent to complete question No. 9 on the form on its face violates 30 C.F.R. 50.20(a), and directly impinges upon MSHA's ability to comprehensively compile data on injury causation factors. Petitioner also believes that a delay in the reporting and description of an occupational injury can impede the investigative capability of MSHA, and that an omission on the reporting form defeats the twin goals of the reporting requirements of Part 50--swift investigation of accidents and compilation of injury causation factors. Since these objectives are central to MSHA's efforts at health and safety regulation, petitioner concludes that the partially completed form violated 30 C.F.R. 50.20(a) as a matter of law.

The respondent concedes that the purpose and scope of Part 50 is to implement MSHA's authority to investigate, to obtain and utilize information pertaining to mine accidents, injuries, and illnesses, and that the information received will be used to develop the rates of injury occurrence, and, data respecting injury severity.

Respondent acknowledges that 30 C.F.R. 50.20⁴ sets forth the criteria for completion of Section A of the form, and that this includes identification data such as the mine identification number (I.D.), and the mine and company name. Conceding that the obvious purpose for this information is to identify the mine location and name for investigation purposes, the respondent argues that the information should be read together with the information at the end of the form which requires the name of the person completing the form, the title, date, and the area code and phone number. The respondent asserts that when it provided the mine I.D. number, the location of its mine, the name of its clerk, and its phone number, MSHA had all the information it needed to promptly investigate. Respondent suggests that had MSHA dialed the

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listed phone number, the first thing which would be learned is the company's name, and coupled with its listed I.D. number, the respondent's involvement would have been readily identified.

With regard to item No. 9, Section C of the form, the respondent points out that 30 C.F.R. 50.20Ä6 states that the condition contributing to the accident should be described, and that this means stating what happened, the reasons therefor, and the factors which contributed to the injury and damage. Respondent asserts that these requirements should be read together with item Nos. 20, 21, and 22 of the form. Respondent points out that in the report which it filed on March 25, 1985, it was stated that the employee slipped and bruised his right knee. The amended form which MSHA accepted as abatement stated that the employee was "walking around the dozer and sprained knee," and the information provided in the initial report stated the same "slipping and bruising the knee" information, and that nothing more could be said.

With regard to item No. 10 as to "equipment," respondent states that it was left blank since no equipment was involved. Item No. 11 as to "witnesses" was left blank because no witnesses were involved. Respondent suggests that when all of the information it submitted on its initial form is read together, MSHA had all the information necessary to carry out the purposes of the Act and regulations. Respondent points out that even with violation, nothing more was added.

Respondent asserts that the alleged violation and proposed \$20 civil penalty assessment is based on a de minimus and highly technical construction of the regulations. Respondent concludes that the information provided was in substantial compliance with the regulation, and was sufficient for MSHA to perform its information gathering duties.

Findings and Conclusions

I conclude and find that the injury suffered by Mr. Podliski was an "occupational injury" as defined by 30 C.F.R. 50.2(e), and that it was required to be reported on MSHA Form 7000Ä1, as stated in 30 C.F.R. 50.20(a). While I agree with the respondent's assertion that the information furnished on the form as originally filed with MSHA was in substantial compliance with the reporting requirements of section 50.20(a), I conclude and find that the failure of the respondent to fully describe the conditions contributing

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to the accident in question, coupled with the total omission of the information required in question No. 9, constitutes a violation of section 50.20(a). While it is true that the information submitted by the respondent indicated that the accident victim slipped and bruised or sprained his knee, there is no information to explain how it occurred, what caused the slip, etc. The applicable criteria found in section 50.20Å6(a)(3), required that this information be supplied.

Respondent suggests that since the form was filled out by one of its office clerks, the omissions were the result of clerical oversight. While this may be true, I take note of the fact that section 50.20(a) requires that the form in question be completed or reviewed by the respondent's principal officer in charge of health and safety at the mine or the supervisor of the mine area in which the accident or injury occurred. I find nothing in this case to suggest that this was done. It seems to me that the preparation or review of the form by the mine safety officer, or some supervisory foreman at the area where the accident occurred, before it was submitted may have resulted in the full completion of the form and may have prevented the issuance of the citation.

With regard to the respondent's assertion that its failure to include the name of the operator and to complete item Nos. 10 and 11 were de minimus oversights, while it may be true that no equipment or witnesses were involved in the accident, MSHA has no way of knowing that unless the person submitting the form clarifies it by indicating "none" or otherwise explaining it. MSHA may wish to clarify its instructions to preclude future oversights and omissions of this kind. With respect to the omission of the company name, while it is true that the mine I.D. and telephone number were supplied, the requirement that the company name be included on the form seems like a rather basic and innocuous requirement that should be complied with.

In view of the foregoing, I conclude and find that a violation has been established, and the citation IS AFFIRMED.

Civil Penalty Assessment

The parties have filed no information concerning the six statutory criteria found in section 110(i) of the Act. However, I take note of the fact that the violation was assessed as a "single penalty" by MSHA. The information contained in the pleadings and proposed assessment made by the pleadings reflects that the respondent is a small operator. I conclude

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that a civil penalty of \$10 is appropriate and reasonable for the violation in question.

ORDER

The respondent IS ORDERED to pay a civil penalty in the amount of \$10 for the violation in question, and payment is to be made to MSHA within thirty (30) days of the date of this decision. Upon receipt of payment, this matter is dismissed.

George A. Koutras
Administrative Law Judge