

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES

333 W. COLFAX AVENUE, SUITE 400  
DENVER, COLORADO 80204

JUL 24 1986

COORS ENERGY COMPANY, : APPLICATION FOR REVIEW  
Applicant :  
 : Docket No. WEST 86-40-R  
v. : Order No. 2831341; 11/14/85  
 :  
SECRETARY OF LABOR, : Keenesburg Mine  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), :  
Respondent :  
 :  
COORS ENERGY COMPANY, : CONTEST PROCEEDINGS  
Contestant :  
 : Docket No. WEST 86-186-R  
v. : Citation No. 2831343; 11/14/85  
 :  
 : Docket No. WEST 86-187-R  
 : Citation No. 2831344; 11/14/85  
SECRETARY OF LABOR, :  
MINE SAFETY AND HEALTH : Keenesburg Mine  
ADMINISTRATION (MSHA), :  
Respondent :

DECISION

Appearances: Earl K. Madsen, Esq., Bradley, Campbell & Carney,  
Golden, Colorado,  
for Applicant/Contestant:  
James H. Barkley, Esq., Office of the Solicitor,  
U.S. Department of Labor, Denver, Colorado,  
**for Respondent.**

Before: Judge **Carlson**

Docket number WEST 86-40-R came on regularly for hearing at Denver, Colorado on June 17, 1986. The matter arose out of an imminent danger- withdrawal order issued by a representative of the Secretary of Labor on November 14, 1985, under section 107(a) of the Mine Safety and Health Act of 1977. The order, number **2831341**, did not allege in block 9 of the Secretary's citation and order form that the condition or practice which accounted for the imminent danger was caused by a violation of a mandatory safety standard. The narrative description of the conditions which caused the order to issue, however, referred to two citations written under section 104(a) of the Act which the Secretary's inspector issued contemporaneously with the order. The alleged 104(a) violations, citations numbered 2831343 and 2831344, were described in the order as "contributing factors to the order."

In the instant proceeding, the parties jointly requested they be permitted to resolve all three matters, the order and two citations, in the single proceeding since all three arose out of what was essentially a single occurrence.

The parties also represented that the two citations should have been before the Commission for adjudication since Coors Energy had lodged timely contests with the Secretary at the same time as it filed its application for review of the withdrawal order. Counsel for Coors produced documentation for this claim, including copies of the receipts for certified mail signed by an agent for the Secretary and copies of the contests dated December 9, 1985, the same date as the application for review in the file of docket WEST 86-40-R, the **107(a)** case. At the hearing the Secretary stipulated that the two notices of contest were timely filed (**Tr. 5**).

Nevertheless, as this judge has verified, the files of the Commission's Docket Clerk contain no records that the notices of contest were received and docketed. They show only that the application for review of 107(a) withdrawal order 2831341 was received and docketed.

At the hearing this judge concluded upon the record that Coors Energy had done all those things required of it by the applicable law and regulations to contest the two citations. **It** followed that the operator was entitled to have its contests docketed. This has now been done by the assignment of docket numbers and assembling of files for each contest. Citation number 2831343 was assigned docket number WEST 86-186-R; Citation number 2831344 was assigned docket number WEST 86-187-R. Also, in accordance with a determination made by this judge at the hearing, the order and citation dockets are now consolidated for decision.

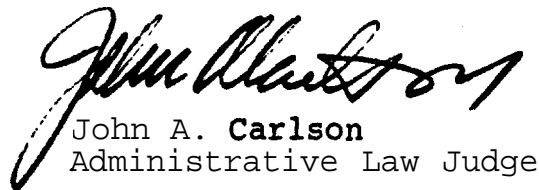
We now turn to the parties proposed agreement for disposition of the three dockets. The Secretary agrees to withdraw the 107(a) order on grounds that post-order conferences with the operator convinced the Secretary's representatives that its issuance was not warranted.

Coors Energy, on the other hand, moved to withdraw its contest of the two citations for violations of mandatory safety standards, conditioned upon the granting of the Secretary's motion to re-classify the violations from "significant and substantial" to "non-significant and substantial."

Having considered the representations and explanations of the parties, I conclude that the actions proposed are appropriate and should be approved.

One further matter merits consideration. The parties also recited for the record an agreement that the penalties for each of the two citations should be set at \$20.00. Some question exists, however, as to whether this case is in the proper posture to assess penalties. The contests of citations at stake here involve only the question of violation and special findings which relate to violation. Consequently, no order is issued here respecting penalty. The penalty aspect of the parties' agreement is firmly on the **record**, however, and may surely be effected administratively without difficulty.

In accordance with the foregoing, the 107(a) order challenged by Coors Energy in docket WEST 86-40-R is ORDERED vacated; the citations contested in WEST 86-186-R and WEST 86-187-R are ORDERED affirmed; and the violations involved in both are ORDERED reduced from "significant and substantial" to "non-significant and substantial."

  
John A. Carlson  
Administrative Law Judge

Distribution:

Earl K. Madsen, Esq., Bradley, Campbell & Carney, 1717 Washington Avenue, Golden, Colorado 80401-1994 (Certified Mail)

James H. Barkley, Esq., Office of the Solicitor, U.S. Department of Labor, 1585 Federal Building, 1961 Stout Street, Denver, Colorado 80294 (Certified Mail)

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