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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. SE 86-36
A.C. No. 40-02831-03519

v.

No. 1 Mine

G & G COAL COMPANY, INC.,
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Melick

This case is before me upon a petition for assessment of civil penalty under Section 105(d) of the Federal Mine Safety and Health Act of 1977 (the Act). Petitioner has filed a motion to approve a settlement agreement and to dismiss the case. A reduction in penalties from \$6,800 to \$5,780 is proposed. In support of his motion the Petitioner states in part as follows:

The citations issued herein resulted from an inspection of a fatal accident at respondent's No. 1 Mine, occurring at approximately 8:30 p.m., July 9, 1985. The accident, involving the detonation of explosives, resulted in the death of miner Ricky Kilgore, age 28, a utility man with approximately eight years mining experience. The investigation disclosed that the accident occurred on the maintenance shift and that in addition to the deceased two other miners were physically present in the No. 1 Mine. Further the investigation disclosed that the deceased miner alone had drilled and charged, in sequence, the Nos. 5 and 6 working places in preparation for blasting from the solid. Immediately prior to the blast and resulting accident, the deceased miner called out his intention to set off charges to the two additional miners who were located approximately 180 feet out-by the No. 5 face. The blast of the No. 6 working face resulted in a simultaneous detonation of granulated powder explosives and electric detonators which had been stored upon the mobile coal drill which the deceased had placed in the last cross-cut between the Nos. 5 and 6 entries. The charges in the No. 5 face did not detonate. Subsequent to the blast, the victim was discovered, his body having been thrown by the

force of the blast against a rib. Due to destruction at the site resulting from the blast, the direct cause of detonation of the explosives could not be precisely determined; however, inspection of the scene resulted in the conclusion that the proximate cause of the fatality was the detonation of materials on the aforesaid mobile drill. Moreover, examination of the No. 6 working place did not reveal evidence of a blown out shot or other abnormality. Attached as Exhibit "A" is a "sketch of fatal explosives accident" which depicts the scene of the aforesaid accident.

As a result of the investigation of the aforesaid accident, the Secretary alleged violations of safety and health standards at respondent's No. 1 Mine as follows:

a. Citation No. 2193274, issued July 12, 1985, alleged a violation of the mandatory safety and health standard at 30 C.F.R. 75.1303.(FOOTNOTE 1) . . . Said condition . . . was observed during the investigation of the aforesaid fatal accident, the location of same being depicted in Exhibit "A". Because of the hazard associated with an open shot, the use of such a blasting cap as a leg wire is violative of 30 C.F.R. 75.1303.

The inspector deemed respondent's negligence to be low because of the unlikelihood that respondent knew or should have known that the deceased miner was using the blasting cap as a leg wire. Moreover, it appeared respondent provided suitable, permissible wire for use in blasting the face of the coal and that it was respondent's policy that said permissible wire be used. The condition created a danger that employees could be injured by an exploding blasting cap, which event was deemed reasonably likely to occur under the circumstances. Moreover, an injury resulting from such an event could reasonably be expected to result in lost work days or restricted duty for injured miners. The cited condition affected one miner at the time. The circumstances occurred on

respondent's maintenance shift and the only two other miners in the mine were approximately 180 feet away.

Respondent exhibited its good faith by immediately abating the violation alleged in the citation. The inspector deemed the violation to be of such a nature as to contribute significantly and substantially to a hazard, which citation was assessed at \$30 after giving respondent credit for its good faith. Respondent has agreed to pay this amount.

b. Citation No. 2193275 was issued July 12, 1985, alleging a violation of the mandatory safety and health standard at 30 C.F.R. 75.1307.(FOOTNOTE 2) . . . The cited standard, which requires the proper storage of explosives and detonators, was deemed to be violated by respondent, which violation resulted in a fatal injury to a miner. The inspection revealed that explosives being used by the deceased miner at the time of the aforesaid accident were stored upon the mobile coal drill depicted in Exhibit "A", not a separate, closed container. The coal drill was located less than 50 feet from No. 6 working place at the time the blast occurred. Although blast destruction prevented a determination of the direct cause of the detonation of the explosives on the drill, it occurred simultaneously with the detonation of No. 6 working face by the deceased. The inspector deemed respondent's negligence to be high in that the inspector determined that the violative method of storing the explosives had been observed previously. Said negligence is subject to some mitigation, however, in that the violative condition occurred on the maintenance shift when fewer miners were working; the deceased miner had alone prepared the Nos. 5 and 6 faces for blasting and the respondent had provided appropriate and proper storage facilities near the working sections which the deceased could have used.

The condition cited resulted in the occurrence of the event against which the cited standard was

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directed and the resulting injury was fatal. Only the deceased miner was affected by the event although two additional miners were working approximately 800 feet out-by the working face. Respondent exhibited its good faith by immediately abating the violation alleged in the citation by requiring the storage of explosives in the section storage magazines.

The inspector deemed the violation to be of such a nature as to contribute significantly and substantially to a hazard which citation was specially assessed at \$6,500. The Secretary believes that because of the aforesaid mitigating factors related to respondent's negligence, a small reduction in the assessment is appropriate and, therefore, it is proposed a penalty of \$5,750 be assessed, which respondent agrees to pay.

I have considered the representations and documentation submitted in this case, and, while I do not necessarily agree with the rationale advanced, I conclude that the proffered settlement is appropriate under the criteria set forth in Section 110(i) of the Act.

WHEREFORE, the motion for approval of settlement is GRANTED, and it is ORDERED that Respondent pay a penalty of \$5,780 within 30 days of this order.

Gary Melick
Administrative Law Judge

1 30 C.F.R. 75.1303 provides, in part, that " . . . in all underground areas of a coal mine only permissible explosives, electric detonators of proper strength, and permissible blasting devices shall be used and all explosives and blasting devices shall be used in a permissible manner . . . "

2 30 C.F.R. 75.1307 provides, in part, that [e]xplosives and detonators stored in the working places shall be kept in separate closed containers which shall be located out of the line of blast and not less than 50 feet from the working face . . . "

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EXHIBIT "A"