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SOL (MSHA) V. VP-5 MINING
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

CIVIL PENALTY PROCEEDING

Docket No. VA 89-56
A.C. No. 44-03795-03592

v.

VP-5 Mine

VP-5 MINING COMPANY,
RESPONDENT

DECISION

Appearances: Javier Romanach, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia
for Petitioner;
Marshall S. Peace, Esq., Assistant General
Counsel, Peabody Coal Company, Lexington, Kentucky,
for Respondent.

Before: Judge Melick

This case is before me upon the petition for 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," charging the VP-5 Mining Company (VP-5) with 10 violations of the regulatory standard at 30 C.F.R. 50.20(a). The general issues before me are whether VP-5 violated the cited regulatory standard and, if so, the appropriate civil penalty to be assessed in accordance with section 110(i) of the Act.

At hearing the Secretary moved to vacate Citation Nos. 2760925, 2970940, 2970922 and 2971927 for the reason that those citations were controlled by the Commission decision in the case of Secretary v. Garden Creek Pocahontas Company, 11 FMSHRC 2148 (1989). The Secretary further moved to vacate Citation No. 2971939 on the grounds that she cannot prove that the miner suffering the alleged eye injuries actually used the prescribed medication.

The parties also moved for approval of a settlement agreement regarding Citation Nos. 2971928, 2971932, 2971935 and 2971936 in which Respondent agreed to pay the proposed penalties of \$80 in full. I have considered the representations and documentation submitted herein and

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conclude that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act. Accordingly an appropriate order will be incorporated in this decision setting forth the terms of payment.

The citation remaining at issue, No. 2971929, alleges a violation of the regulatory standard at 30 C.F.R. 50.20(a) and charges as follows:

The operator failed to report to MSHA on Form 7000-1 an occupational injury as required by 50.20(a) of C.F.R. Employee Curtis Osborne incurred an injury on June 30, 1987, and returned to work on July 3, 1987, resulting in one lost work day.

30 C.F.R. 50.20(a) provides in relevant part as follows:

Each operator shall maintain at the mine office a supply of MSHA mine accident injury and illness report Form 7000-1 . . . each operator shall report each accident, occupational injury or occupational illness at the mine . . . the operator shall mail completed forms to MSHA within 10 working days after an accident or occupational injury occurs or an occupational illness is diagnosed.

30 C.F.R. 50.2(e) provides that:

[o]ccupational injury" means any injury to a miner which occurs at a mine for which medical treatment is administered, or which results in death or loss of consciousness, inability to perform all job duties on any day after an injury . . .

The term "injury" is not further defined in the regulations. However the ordinary meaning of the term "injury" is "an act that damages, harms or hurts"; or "hurt, damage, or loss sustained." Secretary v. Freeman United Coal Mining Company, 6 FMSHRC 1577, 1578-1579 (1984), quoting from Webster's Third New International Dictionary (Unabridged) 1164 (1977). In the Freeman case, a miner developed back pains while putting on his work boots before entering the mine. There was no showing that he had suffered any work related mishap. The miner was hospitalized and did not work for 13 days. The Commission ruled in Freeman that the Secretary did not have to prove that the miner's back injury was related to his work, only that it occurred at the job site. In this regard the Commission stated:

The remainder of the definition in section 50.2(e) refers only to the location where the injury occurred ("at a mine"), and to the result of an injury ("medical treatment, death," etc.). Thus, sections 50.2(e) and 50.20(a), when read together, require the reporting of an injury if the injury - a hurt or damage to a miner - occurs at a mine and if it results in any of the specified serious consequences to the miner. These regulations do not require a showing of a causal nexus.
6 FMSHRC at 1579.

It is not disputed in this case that Curtis Osborne, a miner working at the VP-5 mine on June 30, 1987, suffered pain in his lower back after exiting the cage and as he was walking toward the bottom of the mine. Osborne testified as follows:

I remember getting off the cage, and I was walking over towards the bottom, on the shop-side of the cage. And a pain hit me in my lower back.

It is further undisputed that Osborne was unable to work the next workday because of this back pain and that VP-5 did not file the MSHA Form 7000-1 within 10 days of the onset of this back pain.

Contrary to VP-5's suggestion in its brief, the Commission did not set forth a requirement in the Freeman decision that an "act" must precede the "hurt, damage or loss sustained" in order to establish that an "injury" occurred. It is apparent in any event that the miner herein incurred a "hurt, damage or loss sustained" while engaged in the act of walking in the VP-5 underground mine.

Under the circumstances I find that the Secretary has sustained her burden of proving that Mr. Osborne, a miner, suffered a "hurt" or "damage" in a mine within the context of the Freeman decision and that he therefore suffered an occupational injury under 30 C.F.R. 50.2(e). Accordingly VP-5 had the responsibility under the cited regulatory standard to report the injury within 10 days of its occurrence. Its failure to do so constitutes a violation as charged.

Since the law on this point has been clearly established since at least the 1984 Freeman decision, VP-5 was grossly negligent in failing to have reported the injury in this case. Considering all of the criteria under section 110(i) of the Act I conclude that a civil penalty of \$150 is appropriate for this violation.

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ORDER

VP-5 Mining Company is directed to pay civil penalties totalling \$230 within 30 days of the date of this decision.

Gary Melick
Administrative Law Judge