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SOL (MSHA) V. CONSOLIDATION COAL
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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. PENN 89-266 A. C. No. 36-04281-03667
v.	Dilworth Mine
CONSOLIDATION COAL COMPANY, RESPONDENT	

DECISION

Appearances: Thomas A. Brown, Jr., Esq., Office of the Solicitor, U. S. Department of Labor, Philadelphia, Pennsylvania, for the Secretary;
Walter J. Scheller, III, Esq., Consolidation Coal Company, Pittsburgh, Pennsylvania, for the Respondent.

Before: Judge Weisberger

Statement of the Case

In this Civil Penalty Proceeding, the Secretary (Petitioner) seeks civil penalties for alleged violations by the Operator (Respondent) of 30 C.F.R. 50.20(a). Subsequent to Notice, a hearing was held in Johnstown, Pennsylvania, on January 10, 1990. Robert G. Santee, Larry E. Swift, Donald Edwin Stevenson, Jr., Michael R. Kelecic, and Edward Yaniga testified for Petitioner. Louis Barletta, Jr., Mark Schultz, and Richard Werth testified for Respondent. At the hearing, Petitioner indicated that Citation No. 03098003 was vacated by the Petitioner. Subsequent to the hearing, Respondent filed a Brief on March 28, 1990. Petitioner filed Proposed Findings of Fact and a Brief on April 2, 1990.

Findings of Fact

Citation 3098001

On April 27, 1989, Donald Edwin Stevenson, Jr., was working the 12:01 a.m. shift as a general laborer, at Respondent's Dilworth Mine. At approximately 12:30 a.m., while crawling out

of a man trap that he had used to bring supplies to the area, he felt something pull in back of his right leg, and was unable to move it.

Stevenson received assistance in exiting from the mine, and was taken by ambulance to a hospital, where he was given crutches and motrin. The following day, he was seen by A. J. Patterson, M.D., who gave him a prescription for a muscle relaxant and another medication for pain, and told him to stay home until the following Monday. Dr. Peterson diagnosed Stevenson as having "pulled poplitealous tendon or muscle VS muscle strain soleus and gastrocnemius muscle right knee." (Government Exhibit 7). The following Friday, Stevenson started physical therapy, three times a week for 3 weeks, and on May 23, 1989, was released by Dr. Patterson for return to work on May 24, 1989. Stevenson returned to work on May 23. Respondent did not report Stevenson's injury to MSHA.

On July 12, 1989, Robert G. Santee, an MSHA Inspector, cited Respondent for a violation of 30 C.F.R. 50.20 on the ground that the Operator had not completed and mailed Form 7000-1 to report Stevenson's injury.

On cross-examination, Respondent elicited from Stevenson that he has a history of injuries to his right knee, including days missed in November and December 1988. It also was elicited that on April 7, 1989, Stevenson missed work when he injured his right hip. With regard to the incident on April 27, 1989, Michael R. Kelecic, a laborer on Stevenson's shift on April 27, testified that when he helped Stevenson on April 27, the latter said he had hurt his knee. Mark Schultz, Respondent's safety supervisor, indicated that on May 2, when he asked Stevenson what happened to his knee, the latter indicated that he felt a sharp pain but had not twisted it. Richard Werth, Respondent's safety inspector, indicated that when he spoke to Stevenson on April 27, and asked him what happened, the latter indicated that he had not twisted his knee or done anything. Werth said that Stevenson indicated that he just experienced a burning sensation in his right knee when he was crawling out of the man trip.

Citation 03098002

On April 17, 1989, Edward Yaniga, a belt cleaner for Respondent, while working the afternoon shift, was using a longhandled shovel to clean under a belt. When he reached under the belt with the shovel to drag the coal towards him, he felt a

"pinch" from his neck to his right shoulder (Tr. 75). Yaniga was taken to an emergency room of a local hospital, and was seen by a physician, who diagnosed him as suffering from acute strain, and prescribed pain, medication. The following day Yaniga saw Dr. Patterson, who provided the same diagnosis, and prescribed a pain medication, percodan. He was off from work for a total of 5 weeks, during which time he underwent physical therapy for 45 minutes, 3 to 4 times a week.

II.

Discussion

Respondent argues that reports of the incidents to Stevenson and Yaniga were not required, as there was no causal nexus between the work environment and their injuries.

30 C.F.R. 50.20(a), in essence, requires an operator to report to MSHA, by way of a Form 7000-1, all accidents and occupational injuries. 30 C.F.R. 50.2(e) defines an "occupational injury'% as follows:

> "Occupational 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, temporary assignment to other duties, or transfer to another job."

In Secretary v. Freeman United Coal Mining Co., 6 FMSHRC 1577 (1984). The Commission held that the Operator therein had to comply with the reporting requirements of section 50.20(a), supra, and report an injury to a miner, who experienced back pain while putting on his work boots in the wash house of the Operator's mine. The Commission specifically rejected the Operator's argument that section 50.2(e), supra, which defines an occupational injury, contemplates that there must be a causal nexus between the miner's work and the injuries sustained. The Commission, at 1578-1579, supra, stated as follows:

> In interpreting the term "occupational injury," as defined in section 50.2(e), we look first to the plain language of the regulation. Absent a clearly expressed legislative or regulatory intent to the contrary, that language ordinarily is conclusive. As noted above, section 50.2(e) defines an occupational injury as "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, temporary assignment to other duties, or transfer to another job." The term "injury" is not further defined. The ordinary

meaning of injury is: "an act that damages, harms, or hurts;" or "hurt, damage, or loss sustained." Webster's Third New International Dictionary (Unabridged) 1164 (1977). 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.

Nor does the regulatory history show any intent to require such a specific causal connection. In fact, just the opposite is true. 30 C.F.R. Part 50, in which sections 50.2(e) and 50.20(a) are contained, was originally promulgated by the Department of the Interior's Mining Enforcement and Safety Administration ("MESA," the predecessor agency to MSHA) under the authority of the Federal Metal and Nonmetallic Mine Safety Act, 30 U.S.C. 721 et seq. (1966) (repealed 1977) ("Metal Act"), and the Federal Coal Mine Health and Safety Act, 30 U.S.C. 801 el seq. (1976) (amended 1977) ("Coal Act"). Part 50 revised and consolidated previously separate reporting requirements under the Part 58 standards for metal and nonmetal mines and the Part 80 standards for coal mines. 42 Fed. Reg. 55568 (October 17, 1977). When promulgated by MESA, section 50.2(e) deleted the Parts 58 and 80 requirement that an occupational injury arise out of and/or in the course of work and added the present requirement that, to be reportable, an occupational injury need only occur at a mine. See 42 Fed. Reg. 65534. MESA's deletion of a more specific work-related criterion militates against our according such a construction to these regulations. See, e.g., U.S. v. Guthrie, 387 F.2d 569, 571 (4th Cir. 1967). We conclude that the above-noted regulatory history and the plain language of thesection 50.2(e) definition of occupational injury control iconstruing the related reporting requirement of section 50.20(a).

I find that the above holding in the Freeman v. United Mining Coal Co., supra, case applies with equal force to the case before me.2 Due to the precedent established by the Commission

in Freeman, supra, I reject Respondent's arguments that section 50 and MSHA's program Information Bulletin No. 88-05 provides that an injury is reportable only if it is caused by something in the work environment. I also refuse to accept Respondent's argument which would require me, in essence, to reject the Commission's holding in Freeman, supra.

I thus conclude that the evidence establishes that the Respondent violated section 50.20(a). There was no negligence on Respondent's part in connection with the violations found herein, as Respondent's witnesses established that they had a good faith belief, although erroneous, that the injuries herein to Stevenson and Yaniga were not reportable. I conclude that a penalty of $20, as assessed, is appropriate for each violation found herein which was cited in Citation 3095001 and 3098002.

Citation No. 3098003

At the Hearing, Petitioner moved to vacate Citation No. 3098003. This Motion was not opposed by Respondent, and it is accordingly GRANTED.

ORDER

It is ORDERED that Respondent shall pay $40, within 30 days of this Decision, as a civil penalty for the violations found herein.

It is further ORDERED that Citation No. 3098003 be DISMISSED.

Avram Weisberger
Administrative Law Judge

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FOOTNOTES START HERE

1. Stevenson had originally testified that the incident occurred on April 17. However, he subsequently refreshed his recollection, and amended that date to April 27, which is the date contained in the Report of Personal Injury (Respondent's Exhibit 3), and the attending Physician's Statement of Disability (Government Exhibit 7). I therefore found that the incident occurred on April 27, 1989.

2. See also Secretary v. VP-J Mining Co., 12 FMSHRC ____ (March 1, 1990), wherein Judge Melick, in facts similar to the case at bar, held, citing Freeman, supra, that an Operator had to report an injury of a miner who suffered back pain after exiting a cage. Judge Melick ruled that this injury was within the scope of section 50.2(e), supra, as it was incurred while the miner was engaged in the act of working in the Operator's underground mine.