

CCASE:  
SOL (MSHA) v. DON FRAZE  
DDATE:  
19910605  
TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges  
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Falls Church, Virginia 22041

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

CIVIL PENALTY PROCEEDING  
  
Docket No. LAKE 91-63-M  
A.C. No. 12-00004-05530-A

v.

DON FRAZE, EMPLOYED BY  
LITER'S QUARRY OF INDIANA,  
INCORPORATED,  
RESPONDENT

Atkins Plant

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

CIVIL PENALTY PROCEEDING  
  
Docket No. LAKE 91-73-M  
A.C. No. 12-00004-05529-A

v.

RANDEE LANHAM, EMPLOYED  
LITER'S QUARRY OF INDIANA  
INCORPORATED

Atkins Plant

ORDER DENYING MOTIONS FOR SETTLEMENT

On April 19, 1991, these cases were scheduled for hearings to commence on June 12, 1991. On June 4, 1991, the Secretary filed a pleading captioned "Motion to Approve Settlement and to Dismiss" regarding both cases. The Secretary seeks to waive the proposed civil penalty of \$600 for Mr. Lanham's "knowing" violation of the cited standard based upon undisclosed "information received that he is no longer in the mining business and has serious financial problems." Without any factual support for the bald allegations however, they cannot provide a basis for any reduction in penalty. The Secretary is without authority, moreover, to "waive" a civil penalty for violations of a mandatory health or safety standard. See section 110 Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, et seq.

The Secretary also seeks a 50 percent reduction for the \$500 penalty proposed against Mr. Frazee. The unchallenged assessment notice states in part as follows:

~1060

On March 26, 1990, Section 107(a) Order 3441990 was issued to Liter's Quarry of Indiana, Incorporated, at the Atkins Plant. The mine operator was cited for a violation of 30 C.F.R. 56.11001 because safe means of access was not provided for travel around the primary crusher or to its booth. The flooring had been removed and persons were required to work or travel near the opening around the crusher.

The gravity of the violation was serious, and the violation could have contributed to a fall-of-person accident.

Evidence developed during an MSHA investigation of the circumstances surrounding the issuance of the 107(a) Order indicates that you had been aware of the opening created by the removal of the flooring around the crusher but did nothing to prevent persons from working near the area while the crusher was in operation.

In attempting to justify the proposed reduction in penalty the Secretary does not deny that Mr. Frazee knew of the violative condition and that he did nothing to protect employees required to work in the area from falling into the operating crusher but states only that Mr. Frazee "wanted to observe how . . . new bearings were working before putting back the flooring." I cannot accept this rationale for any reduction in penalty. If anything it is an aggravating circumstance.

Accordingly, the Motion for Settlement is denied and the hearings previously set will proceed as scheduled. Secretary v. Wilmot Mining Co., 9 FMSHRC 684 (1987); Knox County Stone Company, 3 FMSHRC 2478 (1981).

Gary Melick  
Administrative Law Judge  
703-756-6261