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MSHA V. SHELL ENERGY  
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SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. WEVA 91-58  
Petitioner : A.C. No. 46-07081-03528  
v. :  
: Victoria No. 1 Mine  
SHELL ENERGY COMPANY, INC., :  
Respondent :

DECISION

Appearances: Ronald Gurka, Esq., Office of the Solicitor, U.S.  
Department of Labor, Arlington, Virginia, for the  
Petitioner;  
Frank Staud, Shell Energy Company, Inc.,  
Shinnston, West Virginia, for the Respondent.

Before: Judge Melick

This case is before me pursuant to section 105(d) of the  
Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et  
seq., the "Act," to challenge Citation No. 3312037, issued to  
Shell Energy Company, Inc., (Shell Energy) by the Secretary of

1/ Section 104(d)(1) reads as follows:

"(d)(1) If, upon any inspection of a coal or other mine, an  
authorized representative of the Secretary finds that there has  
been a violation of any mandatory health or safety standard, and  
if he also finds that, while the conditions created by such  
violation do not cause imminent danger, such violation is of such  
nature as could significant and substantially contribute to the  
cause and effect of a coal or other mien safety or health hazard,  
and if he finds such violation to be caused by an unwarrantable  
failure of such operator to comply with such mandatory health or  
safety standards, he shall include such finding in any citation  
given to the operator under this Act. If, during the same  
inspection or any subsequent inspection of such mine within  
90 days after the issuance of such citation, an authorized  
representative of the Secretary finds another violation of any  
mandatory health or safety standard and finds such violation to  
be also caused by an unwarrantable failure of such operator to  
comply, he shall forthwith issue an order requiring the operator  
to cause all persons in the area affected by such violation,

alleges a violation of the mandatory standard at 30 C.F.R. 75.200 and charges as follows

A 30 feet [sic] cut of coal was mined out of the 2nd split off of the No. 3 Pillar block on the 001 section, resulting in Don Henderson continuous miner operator being 10 feet beyond permanent roof-supports. The approved roof-control states, workman [sic] shall not advance in by roof-bolts except to install temporary supports. This condition should have been known by the mine foreman because he made a preshift examination of the working places before the start of the shift. Randy Moore, Mine foreman.

Respondent Shell Energy admits inter alia, that there was a violation of the cited standard, that the violation was "significant and substantial" and that it was the result of its "unwarrantable failure." Indeed it is quite clear that the admitted violation was extremely serious and the result of operator negligence. Shell Energy argues only that a \$600 penalty as proposed by the Secretary is too high.

More particularly, in its answer to the petition for assessment of civil penalty, Respondent claimed that (1) the "Victoria Mine is shut down and no longer in operation" and (2) "due to market conditions and other extenuating circumstances, the amount of the fine would affect our ability to operate in the future."

At hearing, however, Shell Energy representative Frank Staud acknowledged that the payment of the proposed \$600 penalty would not cause Shell Energy to go out of business. Indeed Staud testified that "if \$600 is going to shut me down, I shouldn't even be in business" and maintained only that he would "rather give that \$600 to a creditor, somebody that I owe money to and needs it . . . ." At hearing Staud also testified that his company has resumed its mining business.

Under section 110(i), in assessing the amount of a civil monetary penalty, the Commission must consider, among other things, "the effect [of the penalty] on the operator's ability to continue in business." Since the parties have stipulated and the evidence clearly demonstrates that payment of the proposed

fn. 1 (continued)  
except those persons referred to in subsection (c) to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated."

Labor pursuant to section 104(d)(1) of the Act. (Footnote 1)/  
The citation

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penalty would not affect Shell Energy's ability to continue in business, I find no basis for a reduction of the proposed penalty. Considering the undisputed evidence, it is clear that the proposed penalty of \$600 is indeed appropriate, if not low, for the corresponding serious and negligent violation in this case.

ORDER

Shell Energy Company, Inc., is directed to pay a civil penalty of \$600 for the violation charged in Citation No. 3312037 within 30 days of the date of this decision.

Gary Melick  
Administrative Law Judge

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