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MSHA V. WALKER STONE
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| SECRETARY OF LABOR, | : | CIVIL PENALTY PROCEEDING |
| MINE SAFETY AND HEALTH | : | |
| ADMINISTRATION (MSHA), | : | Docket No. CENT 91-130-M |
| Petitioner | : | A. C. No. 14-00164-05511 |
| v. | : | |
| | : | Kansas Falls Quarry & Mill |
| WALKER STONE COMPANY, INC., | : | |
| Respondent | : | |

DECISION

Appearances: Robert J. Murphy, Esq., Office of the Solicitor,
U. S. Department of Labor, Denver, Colorado, for
Petitioner;
Mr. David S. Walker, President, Walker Stone
Company, Inc., Chapman, Kansas, for Respondent.

Before: Judge Maurer

STATEMENT OF THE CASE

In this docket, the Secretary seeks a civil penalty of \$112 for a single alleged violation of the mandatory safety standards. Pursuant to notice, a hearing was held on the alleged violation in Topeka, Kansas, on November 26, 1991. No provision was made on the record for posthearing briefs and none were submitted. I have considered the entire record of proceedings in this case and the contentions of the parties, and I make the following decision.

STIPULATIONS

The parties have agreed to the following stipulations, which I accept:

1. Walker Stone Company, Inc., is engaged in the mining and selling of limestone in the United States, and its mining operations affect interstate commerce.
2. Walker Stone Company, Inc. is the owner and operator of Kansas Falls Quarry and Mill, MSHA I.D. No. 14-00164.
3. Walker Stone Company, Inc. is subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. ("the Act").

4. The Administrative Law Judge has jurisdiction in this matter.

5. The subject citation was properly served by a duly authorized representative of the Secretary upon an agent of Walker Stone Company, Inc. on the date and place stated therein, and may be admitted into evidence for the purpose of establishing its issuance, and not for the truthfulness or relevancy of any statements asserted therein.

6. The exhibits to be offered by Walker Stone Company, Inc. and the Secretary are stipulated to be authentic but no stipulation is made as to their relevance or the truth of the matters asserted therein.

7. The proposed penalty will not affect Walker Stone Company, Inc.'s ability to continue in business.

8. The operator demonstrated good faith in abating the violation.

9. Walker Stone Company, Inc. is a small size mine operator with 67,187 hours worked in 1990.

10. The certified copy of the MSHA Assessed Violations History accurately reflects the history of this mine for the 2 years prior to the date of the citation.

DISCUSSION

Section 104(a) Citation No. 3629335 was issued to the operator on March 14, 1991, cites a violation of 30 C.F.R 56.11001 and the condition or practice states as follows

A safe means of access had not been provided for the crusher operator to access the head pulley drive assembly located at the top end of the inclined stacking conveyor that extended southwest from the primary crusher location. Access to this location is necessary to lubricate the head pulley assembly.

Inspector Quartaro, who issued the subject citation, was the Secretary's sole witness at the hearing. He testified that upon his arrival at the operator's quarry on the morning of March 14, 1991, he observed the primary crusher operator coming down the conveyor belt, walking on the belt line itself. This belt was approximately 24-30 inches wide and 100 feet long from the head pulley assembly to the place where the man would be able to get off it. It is inclined at 18 degrees.

MSHA's policy is that it is permissible to use the conveyor belt as an access to the head pulley assembly if there is a handrail along the side for the worker to hang on to while he is walking up and down it. In this particular instance, there were no handrails installed on either side of the belt line. The inspector opined that there was no protection whatsoever offered to the person walking on the belt that would prevent him from falling off the belt and sustaining a serious injury.

The operator, by and through its President, Mr. Walker, admits the fact of the violation, and has since installed such a handrail to abate the violation. However, the operator contests the inspector's special finding of "significant and substantial" (S&S).

A "significant and substantial" violation is described in section 104(d)(1) of the Mine Act as a violation "of such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard." 30 C.F.R. 814(d)(1). A violation is properly designated significant and substantial "if based upon the particular facts surrounding the violation there exists a reasonable likelihood that the hazard contributed to will result in an injury or illness of a reasonably serious nature." Cement Division, National Gypsum Co., 3 FMSHRC 825 (April 1981).

In Mathies Coal Co., 6 FMSHRC 1, 3-4 (January 1984), the Commission explained its interpretation of the term "significant and substantial" as follows:

In order to establish that a violation of a mandatory safety standard is significant and substantial under National Gypsum the Secretary of Labor must prove: (1) the underlying violation of a mandatory safety standard; (2) a discrete safety hazard--that is, a measure of danger to safety--contributed to by the violation; (3) a reasonable likelihood that the hazard contributed to will result in an injury; and (4) a reasonable likelihood that the injury in question will be of a reasonably serious nature.

In United States Steel Mining Company, Inc., 7 FMSHRC 1125, 1129 (August 1985), the Commission stated further as follows:

We have explained further that the third element of the Mathies formula "requires that the Secretary establish a reasonable likelihood that the hazard contributed to will result in an event in which there is an injury." U.S. Steel Mining Co., 6 FMSHRC 1834, 1836 (August 1984). We have emphasized that, in accordance with the

language of section 104(d)(1), it is the contribution of a violation to the cause and effect of a hazard that must be significant and substantial. U.S. Steel Mining Company, Inc., 6 FMSHRC 1866, 1868 (August 1984); U.S. Steel Mining Company, Inc., 6 FMSHRC 1573, 1574-75 (July 1984).

The inspector testified that if a person in the vicinity of the head pulley assembly were to fall from the belt line at that point, it would be approximately a 25 foot fall to the ground. The distance above the ground decreases from there sloping downward at 18 degrees until the point where a person could exit off the belt. Also, the inspector focused on the fact that wind conditions could adversely affect an individual walking up or down an inclined belt line. A gust could blow him off or at least cause him to lose his balance and fall off. Such an accident occurred at this quarry in 1990, when an employee standing on a stacker screen 8-10 feet high off the ground was blown off by a gust of wind. He was knocked unconscious for a short time, broke his collar bone and dislocated his shoulder.

The same result is easily foreseeable in the facts of this case. The mere fact that it hasn't happened yet, does not mean that it would not have occurred had the violative condition remained unabated. I visited the mine site with the parties and observed the cited inclined stacking conveyor. I concur with the inspector that without a handrail installed, just as he saw it on March 14, 1991, it was reasonably likely that a worker could have lost his balance and fallen. This could obviously have resulted in serious injuries. Witness what happened previously at this quarry in an 8-10 foot fall to the ground. I therefore conclude that the violation was significant and substantial.

In light of the criteria in section 110(i) of the Mine Act, I conclude that \$112, as originally proposed by the Secretary, is an appropriate penalty for the violation and will be assessed herein.

ORDER

Based on the above findings of fact and conclusions of law, IT IS ORDERED THAT:

1. Citation No. 3629335 IS AFFIRMED, including the special finding that the violation was significant and substantial.

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2. The Walker Stone Company, Inc. pay a civil penalty of \$112 within 30 days of the date of this decision for the violation found in Citation No. 3629335.

Roy J. Maurer
Administrative Law Judge

Distribution:

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