

CCASE:
SOL (MSHA) V. DANNY OWENS
DDATE:
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. VA 93-3
Petitioner : A.C. No. 44-05668-03608-A
v. :
 : No. 1 Mine
DANNY OWENS, EMPLOYED BY :
J & T COAL INCORPORATED, :
Respondent :

DECISION

Appearances: Caryl L. Casden, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia, for
Petitioner;
Louis Lee, Esq., McAfee, Bledsoe, Lovell & Lee,
Norton, Virginia, for Respondent.

Before: Jerold Feldman

This proceeding is before me upon a petition for assessment of civil penalty under Section 110(c) of the Federal Mine Safety and Health Act of 1977 (the Act). The respondent, Danny Owens, is charged, as an agent of the corporate mine operator, with "knowingly authorizing, ordering, or carrying out" the actions which allegedly resulted in six alleged violations of mandatory safety standards. These violations are detailed in the Secretary's petition for assessment of civil penalty in which a penalty of \$2,400 is proposed.

This matter was called for hearing in Big Stone Gap, Virginia, on June 15, 1993. At the hearing, counsel for the respondent presented a motion for the approval of settlement wherein Owens stipulated to the fact of the violations in issue and agreed to pay a total penalty of \$1,200. The terms of the settlement agreement provide that Owens shall pay \$600 immediately after the approval of settlement and \$50 each month for twelve months thereafter. In support of this settlement, the respondent's counsel indicated that the respondent has recently become employed at a modest salary, that he has no liquid assets, and, that he must support a wife and several children. Thus, the reduction in the proposed penalty is predicated upon the respondent's current income and his ability to support his family. (Tr. 6).

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In view of the respondent's stipulation to the fact of occurrence of the violations in issue and the information provided in support of the reduced civil penalty assessed in this matter, I concluded that the proposed settlement was in the public interest and granted the settlement motion from the bench. (Tr. 7).

ORDER

Accordingly, Danny Owens IS ORDERED to pay a civil penalty in the amount of \$1,200 in full satisfaction for the six violations in issue. Payment is to be made in installments. The first payment of \$600 is due within 30 days of the date of this decision. Beginning on September 1, 1993, on the first of each month, for twelve consecutive months, Owens shall pay \$50 until the outstanding \$600 of the \$1,200 penalty is paid. Upon payment of the total sum of \$1,200, this matter will be dismissed. If Owens fails to abide by this settlement decision, this proceeding will be reopened, and he will be subject to the full \$2,400 penalty.

Jerold Feldman
Administrative Law Judge

Distribution:

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Mr. Danny Owens, P.O. BOX 75, Pennington Gap, VA 24277 (Certified Mail)

vmy