

CCASE:
SOL (MSHA) V. CONSOL PENNSYLVANIA COAL
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SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. PENN 95-11
Petitioner : A. C. No. 36-07230-03761
 :
v. : Bailey Mine
 :
CONSOL PENNSYLVANIA COAL :
COMPANY, :
Respondent :

ORDER ACCEPTING APPEARANCE
ORDER OF DISMISSAL

Before: Judge Merlin

The penalty petition in the above-captioned case was filed on behalf of the Secretary by a "Conference and Litigation Representative", hereafter referred to as a CLR. In the cover letter to the petition the CLR advises that he is an employee of the Mine Safety and Health Administration who has been trained and designated as a CLR and is authorized to represent the Secretary in accordance with an attached Limited Notice of Appearance. In the notice the CLR states that he is authorized to represent the Secretary in all prehearing matters and that he may appear at a hearing if an attorney from the Solicitor's office is also present.

Subparagraph (4) of section 2700.3(b) of the Commission's regulations, 29 C.F.R. 2700.3(b)(4), provides that an individual who is not authorized to practice before the Commission as an attorney may practice before the Commission as a representative of a party with the permission of the presiding judge. In reviewing this matter, note is taken of the fact that more than 5,000 new cases were filed with the Commission in Fiscal 1994. Obviously, a caseload of this magnitude imposes strains upon the Secretary's resources as well as those of this Commission. It appears that the Secretary is attempting to allocate his resources in a responsible matter. Therefore, I exercise the discretion given me by the regulations, cited above, and determine that in this case the CLR may represent the Secretary in accordance with the notice he has filed.

The CLR has filed a motion to dismiss because MSHA has vacated the one violation involved in this matter. The CLR has attached a copy of MSHA's subsequent action vacating the citation.

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In light of the foregoing, it is ORDERED that this case be DISMISSED.

Paul Merlin
Chief Administrative Law Judge

Distribution: (Certified Mail)

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