

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Office of Administrative Law Judges
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May 2, 2023

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

v.

IRON CUMBERLAND, LLC,
Respondent

CIVIL PENALTY PROCEEDING

Docket No. PENN 2023-0007
A.C. No. 36-05018-564091

Mine: Cumberland Mine

DECISION APPROVING SETTLEMENT

Before: Judge Moran

This case is before the Court upon a petition for assessment of a civil penalty under Section 105(d) of the Federal Mine Safety and Health Act of 1977. The Secretary has filed a Motion to Approve Settlement and has set forth the factual basis for the proposed penalty. The Respondent has agreed to the proposed penalty amounts. As reflected in the table below, the originally assessed amount for the citations at issue was \$19,503.00 and the proposed settlement amount is \$13,773.00.

Citation/Order	MSHA's Proposed Penalty	Settlement Amount	Other modifications to citation/order
9258018	\$774.00	\$349.00	Modify Negligence to Low
9580404	\$840.00	\$407.00	Modify Negligence to Low
9258023	\$774.00	\$349.00	Modify Negligence to Low
9257972	\$563.00	\$234.00	Modify Persons Affected to 1, down from 7 affected, asserting only one miner would be expected to slip and fall; 58% reduction in the penalty
9580420	\$234.00	\$234.00	None
9580423	\$1,358.00	\$610.00	Modify Negligence to Low; 55% reduction in penalty

9580424	\$407.00	\$407.00	None
9580425	\$349.00	\$133.00	Modify Injury or Illness to Unlikely, Modify Significant and Substantial Designation to No
9256357	\$1,156.00	\$1,156.00	None
9256358	\$1,156.00	\$1,156.00	None
9256359	\$563.00	\$407.00	Modify Persons Affected to 5
9580430	\$1,358.00	\$1,358.00	None
9581721	\$1,471.00	\$296.00	Modify Injury or Illness to Unlikely, Modify Significant and Substantial Designation to No; 80% reduction in penalty
9580436	\$2,573.00	\$1,156.00	Modify Negligence to Low; 55% reduction in penalty
9257973	\$481.00	\$215.00	Modify Negligence to Low; 55% reduction in penalty
9580439	\$273.00	\$133.00	Modify Negligence to Low; 51% reduction in penalty
9581722	\$3,841.00	\$3,841.00	None
9580802	\$518.00	\$518.00	None
9580803	\$518.00	\$518.00	None
9580806	\$296.00	\$296.00	None
TOTAL	\$19,503.00	\$13,773.00	

The Court has considered the Secretary’s Motion and approves it *solely* on the basis of the Commission’s decisions in *The American Coal Co.*, 40 FMSHRC 983 (Aug. 2018) and *Rockwell Mining, LLC*, 40 FMSHRC 994 (Aug. 2018) for the standard to be applied by administrative law judges when reviewing such settlement motions under the Commission’s interpretation of section 110(k) of the Mine Act. **Under those decisions, the Court’s role in reviewing settlement motions is circumscribed by those decisions, with the result that reasonable inquiry by the Court is not permitted.**

For example, were it permitted to make inquiry, the Court would have questions regarding the claim in the motion with respect to **Citation No. 92580404**, as it implies that the inspector would be obligated to have seen the cited hazards shortly after the preshift examination, a patently unreasonable proposition. The motion asserts that the missing sliding guard and the damaged cutting wheel both could have occurred subsequent to the preshift exam. That both issues would exist pushes plausibility. Inspectors, aware that the absence of a preshift exam violation has been frequently invoked of late by mine operators, should consider whether a citation may be in order for inadequate preshift exams.

In fact, to his credit, the issuing inspector for a different violation, Travis Hamrick, did just that, citing the mine operator in **Citation No. 9258023**, for failing to note *multiple* hazardous conditions along the 75 Headgate longwall belt. That alleged, but now-admitted, inadequate

preshift was associated with the issuance of two other citations flowing from the inadequate exam. Though the inspector's citation made it clear that all three citations were related, the operator asserts again that the inspector did not observe the conditions at the time of the preshift exam itself. The Court lauds the MSHA inspectors for their efforts in protecting miners.

There are other, troublesome, results in the motion. For example, in **Citation No. 9580423**, the now-admitted violation involved a failure to provide a clear travelway of at least 24 inches on both sides of the 76 Tailgate belt. The standard invoked, 30 C.F.R. §75.1403, the statutory 'Other Safeguards' provision, has been cited **82 (eighty-two) times** at this mine in the past two years. The motion's resulting **55% reduction in the penalty** is based upon designating the negligence from moderate to low. But low negligence anticipates "considerable mitigating circumstances." The justification offered is that the mine *had placed a pump in the area*. If that is sufficient to constitute *considerable mitigation*, that is a low bar to meet such a classification.

Although the Court could discuss other reductions in this motion, as a last example, **Citation No. 9581721** involved a now-admitted violation of the mine's ventilation plan. That plan, Inspector Stephen A. Wilt noted, requires that all sprays on the longwall stage loader are to have a *minimum* opening of 3/32 inch, but the sprays at the discharge end of crusher in this instance only had openings of 1/16 inch. In short, the spray openings were more than two times insufficient.

However, the Secretary buys into the assertion that it's a small difference and as such it would not appreciably contribute to overexposure of dust. Motion at 6. That's an interesting take from the Secretary of Labor, as her role is to protect miners from dust and given that *the minimum* opening is to be 3/32. It strikes the Court as disconcerting that the Secretary's representative would essentially agree that the *more than half shortcoming* for the sprays is no big deal. That may not be so comforting to the miners who have to inhale the dust.

And it is problematic that the Secretary's attorney in effect says failure to comply with the *minimum requirements* imposed by MSHA transforms the violation from reasonably likely to *unlikely to result in injury*, and this even though it is indisputable that lung impairments for miners is an incremental consequence of dust exposure and that this mine has been cited **43 (forty-three) times** for violating this standard in the past two years. Such a stance, to this Court, seems inimical to the Secretary's role of protecting the safety and health of miners. It also seems fair to ask whether reducing the regularly assessed penalty from \$1,471.00 down to a mere \$296.00, runs counter to Congress' clearly expressed intent that penalties are to be of sufficient magnitude to cause mine operators to calculate that compliance is less expensive than non-compliance. In the Court's view, a \$296.00 penalty favors the latter approach.

Accordingly, despite the Court's expressed misgivings over some of particulars in these settlements, it is duty-bound to follow the Commission's decisions on the subject of settlements. For that reason, per the Commission's decisions on the scope of a judge's review authority of settlements, the "information" presented in this settlement motion is sufficient for approval.

WHEREFORE, the motion for approval of settlement is **GRANTED**.

It is **ORDERED** that Citations listed in the table above are modified per that table and that the amounts for each citation are similarly reflected.

It is further **ORDERED** that, within 30 days of this order, the operator pay the penalty of **\$13,773.00**, a sum reduced from the original regular assessment amount of \$19,503.00, and representing a **29%** overall reduction in the penalty. Upon receipt of payment, this case is **DISMISSED**.

William B. Moran

William B. Moran
Administrative Law Judge

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