FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710
TELEPHONE: 202-434-9958 / FAX: 202-434-9949

SEP 15 2015

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner	CIVIL PENALTY PROCEEDING Docket No. WEST 2014-1044 A.C. No. 42-02130-360000
v.	
STAKER & PARSON COMPANIES, Respondent	Mine: Lehi Point East

DECISION AND ORDER

Appearances: Robert Ankeney, CLR, U.S. Department of Labor, MSHA, Denver, CO, for Petitioner;

Brad Kinkeade, Esq., Oldcastle Law Group, Atlanta, GA, for Respondent.

Before: Judge L. Zane Gill

This proceeding, arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994) ("Mine Act" or "Act"), involves a 104(a) citation, 30 U.S.C. § 814(a), issued by the Department of Labor's Mine Safety and Health Administration ("MSHA") to Staker & Parson Companies ("Staker" or "Respondent") at its Lehi Point East mine. The Secretary of Labor's Conference and Litigation Representative ("CLR") filed a notice of unlimited appearance with the penalty petition. It is **ORDERED** that the CLR be accepted to represent the Secretary. *Cyprus Emerald Res. Corp.*, 16 FMSHRC 2359 (Nov. 1994).

The Secretary submitted a brief and documentary evidence. The Respondent did not file a response in opposition, which was due to the court on September 10, 2015. The motion for summary decision outlines two issues: 1) whether an injury that occurred on the mine site on September 7, 2010, was reportable under Section 50.20(a), and 2) at what time the injury became reportable. For the reasons stated below, I find that there is no genuine issue of material fact, and the Secretary is entitled to summary decision as a matter of law.

Undisputed Facts

On July 28, 2014, MSHA Inspector Timothy Hannifin traveled to Staker's Lehi Point East mine to conduct an investigation into a hazard complaint. (Ex. S-A1) Citation No. 8824803 alleges that the Respondent failed to report an injury that occurred at the mine. *Id.* At some point during his investigation Hannifin inspected the operator's incident/injury investigation reports. On July 31, 2014, at 11:00 am, Hannifin cited the Respondent for violating Section 50.20(a). Pet.

at p. 13. The citation alleges no likelihood of injury, no lost workdays, not significant and substantial, low negligence, and no persons affected. *Id.* The citation alleges:

> A MINER G.H. REPORTED A[N] INJURY ON 09/07/10. THE MINE OPERATOR FAILED TO COMPLETE AND SUBMIT AN MSHA #7000-1 (MINE, ACCIDENT, INJURY, AND ILLNESS REPORT) FOR THE INJURY. THIS INJURY BECAME REPORTABLE ON JULY 2, 2013 WHEN THE UTAH LABOR COMMISSION DETERMINED THAT A PORTION OF THE INJURY WAS RELATED TO WORK ACTIVITIES.

Id.

As indicated in the Respondent's Incident/Injury investigation report, a truck driver complained of pain and tingling in her upper back, legs, toes, fingers, and arms on September 7, 2010. (Ex. S-A2) The driver complained that the seat in her John Deere 26-1006 truck was not properly set in place and she was jostled around on rough roads. *Id.* The report indicates the injury was a "medical treatment injury" and a "first aid injury." *Id.* When the driver reported her back problems to her supervisor, she was sent to the Work Care Clinic for treatment. *Id.* Physical therapy and medications were recommended. (Ex. S-A3, p. 3) A cervical MRI was performed on Sept. 15, 2010. *Id.* The driver sought workers compensation for her injuries, and in 2012, the Utah State Labor Commission Adjudication Division found that 50% of her injuries were due to workplace activity. (Ex. S-A3, p. 6) In 2013, these findings were affirmed by the Utah State Labor Commission Board of Appeals. (Ex. S-A4)

The Secretary alleges that the operator should have reported the injury to MSHA in 2013, in response to the Labor Commission's decision, and because the operator did not, it violated the standard.

Standard of Review

The Commission has held that "summary decision is an extraordinary procedure." *Mo. Gravel Co.*, 3 FMSHRC 2470, 2471 (Nov. 1981). It is "granted only if the entire record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows: (1) That there is no genuine issue as to any material fact; and (2) That the moving party is entitled to summary decision as a matter of law." 29 C.F.R. § 2700.67. When weighing the parties' arguments, all inferences are "viewed in the light most favorable to the party opposing the motion." *Hanson Aggregates NY, Inc.*, 29 FMSHRC 4, 9 (Jan. 2007) (citations omitted).

Section 50.20(a)

Part 50 regulations require mine operators to report to MSHA any "occupational injury" within ten days of its occurrence. 30 C.F.R. § 50.20(a). Part 50 defines "occupational injury" as "any injury to a miner which occurs at a mine for which medical treatment is administered, or which results in death or loss of consciousness, inability to perform all job duties on any day after an injury, temporary assignment to other duties, or transfer to another job." 30 C.F.R. § 50.2(e).

Analysis and Conclusion

Commission case law indicates that the operator should have reported the injury in September, 2010, when the injury occurred. In the seminal case regarding the injury reporting requirement, the Commission found that when read together, sections 50.2(e) and 50.20(a) "require the reporting of an injury if the injury—a hurt or damage to a miner—occurs at a mine and if it results in any of the specified serious consequences to the miner. *These regulations do not require a showing of a causal nexus.*" *Freeman United Coal Mining Co.*, 6 FMSHRC 1577, 1578-79 (1984). In the *Freeman* case, a miner experienced back pain when putting on his work boots in the wash house, and the operator was required to report the injury under Section 50.20(a). *Id.* at 1578.

The D.C. Circuit upheld MSHA's interpretation of the statute as reasonable and found "the Secretary's interpretation here, *requiring reporting of all injuries to miners at the mine regardless of causal nexus*, is a permissible interpretation of § 50.2(e)." *Energy W. Min. Co. v. Fed. Mine Safety & Health Review Comm'n*, 40 F.3d 457, 464 (D.C. Cir. 1994)(emphasis added). In that case, the mine was cited for failure to report an employee's injury suffered when his personal vehicle rolled into a ditch near a mine parking lot. *Id.* at 459.

Here, even viewed in the light most favorable to the Respondent, there is no genuine issue of material fact and the Secretary is entitled to summary decision as a matter of law. This is based on the Respondent's own Incident/Injury Investigation Report completed on September 8, 2010. The driver was injured on the mine site because she experienced "a hurt or damage," i.e. pain and tingling, to her back, legs, arms, fingers, and toes, due to the bad seat in her haul truck and the rough mine roads. The Respondent designated the injury as a "medical treatment injury" and a "first aide injury." Medical treatment was administered at the Work Care Clinic. No causal nexus must be shown between the injury and work performed, and therefore, the Respondent should have reported the injury within ten days after the injury was reported on September 7, 2010. The operator violated Section 50.20(a) by not reporting the injury within 10 days.

Penalty

The proposed penalty is $100.00. The mine operates 56,295 hours per year. The negligence designation was low. There were no repeat violations in the previous two years. No persons were affected. The mine was given a 10% reduction for good faith. Based on the above, I assess the penalty at $100.00.

WHEREFORE, it is **ORDERED** that the Respondent pay a penalty of $100.00 within thirty (30) days of the filing of this decision.

L. Zane Gill
Administrative Law Judge

Distribution:

Robert Ankeney, Conference Litigation Representative, U.S. Department of Labor, MSHA, P.O. Box 25367/M/NM, Denver, CO 80225-0367

Brad Kinkeade, Esq., Oldcastle Law Group, 900 Ashwood Parkway, Suite 600, Atlanta, GA 30338-4780