

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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November 17, 2010

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. LAKE 2009-523
Petitioner	:	A.C. No. 11-03143-187455
	:	Mine: Prairie Eagle
	:	
	:	Docket No. LAKE 2009-501
v.	:	A.C. No. 11-03162-184600
	:	Mine: Royal Falcon Mine
	:	
	:	Docket No. LAKE 2009-438
KNIGHT HAWK COAL, LLC	:	A.C. No. 11-03143-181532
Respondent	:	Mine: Prairie Eagle

DECISION

Appearances: Matthew Linton, Office of the Solicitor, U.S. Department of Labor, Denver, Colorado for the Petitioner
Mark Heath, Spilman Thomas & Battle, PLLC, Charleston, West Virginia for Respondent.

Before: Judge Miller

This case is before me on a petition for assessment of civil penalty filed by the Secretary of Labor, acting through the Mine Safety and Health Administration (“MSHA”), against Knight Hawk Coal, LLC., pursuant to sections 105 and 110 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 815 and 820 (the “Mine Act”). The cases involve the three dockets listed above, containing a total of nine violations, all of which settled at the time of the hearing. The total penalty assessed for the dockets is \$31,402.00. The citations were issued by MSHA under section 104(a) of the Mine Act at the Prairie Eagle mine and at the Royal Eagle Mine. The parties presented the settlement proposal at the hearing held on October 26, 2010 in Evansville, Indiana.

Knight Hawk Coal, LLC, (“Knight Hawk”) is the owner and operator of the Prairie Eagle Mine and the Royal Falcon Mine. The mine agrees that it is subject to the jurisdiction of the Mine Safety and Health Administration and the Administrative Law Judge has jurisdiction to issue this decision. (Tr. 5). In March and April of 2009 MSHA inspectors conducted a regular

inspection of the Prairie Eagle Mine and the Royal Falcon Mine. As a result of the inspection, the citations contested herein were issued.

Docket No. Lake 2009-438: Prairie Eagle Mine

The parties reached an agreement and entered the following stipulation on the record. The originally proposed assessment amount for the docket is \$724.00.

Citation No. 6679874: the parties agree that no modification is made to the citation but the Secretary has agreed to modify the penalty from \$362.00 to \$308.00.

Citation No. 6679875: the parties agree that no modification is made to the citation but the Secretary has agreed to modify the penalty from \$362.00 to \$308.00.

Docket Lake 2009-501: Royal Eagle Mine

The originally proposed assessment amount for the docket is \$1,333.00.

Citation No. 6680512: the parties agree that no modification is made to the citation but the Secretary has agreed to modify the penalty from \$1,026.00 to \$872.00.

Citation No. 6680515: the parties agree that no modification is made to the citation but the Secretary has agreed to modify the penalty from \$207.00 to \$176.00.

Citation No. 6680516: the parties agree that no modification is made to the citation and the Respondent agrees to pay an amended penalty of 2,276.00.¹

Docket No. Lake 2009-523: Prairie Eagle Mine

The originally proposed assessment amount for the docket is \$26,767.00

Citation No. 8417042: the parties agree that no modification is made to the citation but the Secretary has agreed to modify the penalty from \$9,882.00 to \$2,470.00.

Citation No. 8417043: the Secretary agrees to reduce the violation to non S&S to modify it to “unlikely” and reduce the original penalty of \$8,893 to \$800.00.

Citation No. 8417044: the parties agree that no modification is made to the citation but the Secretary has agreed to modify the penalty from \$3,996.00 to \$3,000.

¹This file originally contained citation No. 6680514 and not 6680516. Citation No. 6680514 has been paid and, instead, the docket has been amended to include Citation No. 6680516.

Citation No. 8417045: the Secretary agrees to reduce the violation to non S&S and reduce the proposed penalty from \$3,996.00 to \$500.00.

PENALTY

The principles governing the authority of Commission administrative law judges to assess civil penalties de novo for violations of the Mine Act are well established. Section 110(i) of the Mine Act delegates to the Commission and its judges “authority to assess all civil penalties provided in [the] Act.” 30 U.S.C. § 820(i). The Act delegates the duty of proposing penalties to the Secretary. 30 U.S.C. §§ 815(a), 820(a). Thus, when an operator notifies the Secretary that it intends to challenge a penalty, the Secretary petitions the Commission to assess the penalty. 29 C.F.R. § 2700.28. The Act requires, that “in assessing civil monetary penalties, the Commission [ALJ] shall consider” six statutory penalty criteria:

[1] the operator’s history of previous violations, [2] the appropriateness of such penalty to the size of the business of the operator charged, [3] whether the operator was negligent, [4] the effect on the operator’s ability to continue in business, [5] the gravity of the violation, and [6] the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation.

30 U.S.C. § 820(i).

I accept the stipulation of the parties that the penalties proposed are appropriate to this operator’s size and ability to continue in business and that the violations were abated in good faith. The history of each mine is typical for a mine of its size. The size of the operator is small. I accept the Secretary’s proposed modification of the penalties based upon the information presented regarding the reduced negligence for the citations as discussed above. Further, I find that the Secretary has established the gravity as described in the citation or as modified and assess the following penalties as agreed by the parties:

Docket No. Lake 2009-418:

Citation No. 6679874	\$308.00
Citation No. 6679875	\$308.00.

Docket Lake 2009-501:

Citation No. 6680512	\$872.00
Citation No. 6680515	\$176.00.
Citation No. 6680516	\$2,276.00

Docket No. LAKE 2009-523:

Citation No. 8417042	\$2,470.00
Citation No. 8417043	\$800.00
Citation No. 8417044	\$3,000.00
Citation No 8417045	\$500.00

Total for all of the dockets: \$10,710.00.

ORDER

Based on the criteria in section 110(i) of the Mine Act, 30 U.S.C. § 820(i), I assess the penalties listed above for a total penalty of \$10,710.00 and Knight Hawk Coal, LLC, is hereby **ORDERED** to pay the Secretary of Labor the sum of \$10,710.00 within 30 days of the date of this decision.

Margaret A. Miller
Administrative Law Judge

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