

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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July 24, 2014

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

v.

MIZE GRANITE QUARRIES, INC.;
ROBERT W. MIZE III; and
CLAYBORN LEWIS
Both Employed by MIZE GRANITE
QUARRIES, INC.,
Respondents

CIVIL PENALTY PROCEEDINGS

Docket Nos. SE 2009-401-M
SE 2009-402-M
A.C. No. 09-01036-179032

Docket No. SE 2009-553-M
A.C. No. 09-01036-184807

Docket No. SE 2009-554-M
A.C. No. 09-01036-184807

Docket No. SE 2010-849-M
A.C. No. 09-01036-219258

Docket No. SE 2010-850-M
A.C. No. 09-01036-219259

Mine: Mize Granite Quarries

DECISION AND ORDER

Appearances: Charna C. Hollingsworth-Malone, Esq., Sophia E. Haynes, Esq., Angela R. Donaldson, Esq., U.S. Department of Labor, Office of the Solicitor, Atlanta, GA for Petitioner

Robert W. Mize III, President Mize Granite Quarries, Inc., Elberton, GA for the Respondents

Before: Judge Rae

These cases are before me upon petitions for assessment of a civil penalty under sections 105(d) and 110(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 815(d), 820(c) (The “Act”). On April 20, 2011, I issued a decision upholding seven violations and three orders assessed by MSHA against Mize Granite Quarries, Inc. with totaled penalties in the

amount of \$25,811.¹ *Mize I*, 33 FMSHRC 886, 915 (Apr. 2011) (ALJ). I further assessed penalties under section 110(c)² of the Act against Robert W. Mize III in the amount of \$1,500.00 for one citation and two orders and against Clayborn Lewis in the amount of \$900.00 for the same violations. *Mize I* at 917-18.

The Commission remanded the decision with instructions to make further attempts to obtain financial documents from Respondent Lewis and to reassess the individual penalties under 110(c). 34 FMSHRC 1760 (Aug. 2012).

Thereafter, I issued a second decision assessing penalties against Mize and Lewis individually. *Mize II*, 35 FMSHRC 414 (Feb. 2013) (ALJ). However, inadvertently and as a result of clerical error, when assessing the penalties under 110(c), I incorrectly stated the negligence with respect to Citation No. 6507102 and Order No. 6505709 as “high” and for Order No. 6505715 as “moderate” rather than as unwarrantable failure as I had found in my first decision. I stated the gravity as “serious” for the first two violations and “moderate” for the third rather than the graver findings I had made previously. *Mize II* at 417. I imposed the identical penalties against Mize and Lewis in both decisions, for the reasons set forth in *Mize I*, after careful consideration of the appropriate section 110(i) criteria³, including the financial positions of both individuals.

¹ As it relates to this decision, I found Citation No. 6507102 and Order Nos. 6505709 and 6505715 to be significant and substantial and an unwarrantable failure to comply with the relevant mandatory standards. I found the gravity to be egregious, callous and reckless in total disregard for miners’ safety.

² Section 110(c), 30 U.S.C. §820(c), provides that:

Whenever a corporate operator violates a mandatory health or safety standard or knowingly violates or fails or refuses to comply with any order issued under this Act or any order incorporated in a final decision issued under this Act, except an order incorporated in a decision issued under subsection (a) or section 105(c), any director, officer, or agent of such corporation who knowingly authorized, ordered, or carried out such violation, failure or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (d).

³ Section 110(i) of the Act grants the Commission the authority to assess all civil penalties provided under the Act. It further directs the Commission and its ALJs to consider: 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 violations, and 6) the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation. As they relate to individuals, the ability to continue in business is evaluated as the individual’s ability to meet his or her financial obligations. With respect to size, the inquiry is whether the penalty is appropriate in light of the individual’s income and net worth. *Ambrosia Coal and Construction Co.*, 18 FMSHRC 819, 824 (May 1997). If the

On July 16, 2014, the Commission noted the incorrect statement of negligence and gravity in my second decision and remanded for clarification and assessment of the penalties against the two individuals under the section 110(i) criteria.

As stated in my first decision with regard to the individual penalties, I found the gravity and negligence for Citation No. 6507102 and Order Nos. 6505709 and 6505715 to be as set forth under the discussion of each of the violations. In other words, I assessed each of these three violations as unwarrantable failure and of the highest gravity demonstrating egregious, reckless and callous disregard for the safety of the miners. *Mize I*, 33 FMSHRC at 917. Having taken that negligence and gravity into consideration, I also took into consideration the remaining 110(i) criteria including the financial obligations and the appropriateness of the penalty in light of the net worth and income of both Mize and Lewis. I assessed penalties in the aggregate amount of \$1,500.00 against Mize and \$900.00 against Lewis.

I find that in consideration of all section 110(i) factors, including the negligence and gravity of the violations as stated in my first decision, the amount of the penalties against both individuals is appropriate and I reiterate my decision.

ORDER

Robert W. Mize III is directed to pay total penalties of \$1,500.00 within 40 days of the date of this decision. Clayborn Lewis is directed to pay total penalties of \$900.00 within 40 days of the date of this decision.



Priscilla M. Rae
Administrative Law Judge

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individual is married, the individual's share of the household net worth, income and expenses should also be considered. *Ambrosia II*, 19 FMSHRC 381, 385 (Apr. 1998).

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