

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
2 SKYLINE, 10th FLOOR  
5203 LEESBURG PIKE  
FALLS CHURCH, VIRGINIA 22041

August 10, 1995

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. CENT 95-1-M  
Petitioner : A. C. No. 14-00164-05524  
v. :  
: Kansas Falls Quarry & Mill  
WALKER STONE COMPANY, INC., :  
Respondent :

## DECISION

Appearances: Ann M. Noble, Esq., Office of the Solicitor,  
U. S. Department of Labor, Denver, Colorado,  
for the Secretary;  
Keith R. Henry, Esq., Weary, Davis, Henry,  
Struebing & Troup, Junction City, Kansas,  
for Respondent.

Before: Judge Maurer

## STATEMENT OF THE CASE

This case is before me upon the petition for civil penalty filed by the Secretary of Labor pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 801 et seq., the "Act," charging Walker Stone Company, Inc., with two violations of the regulatory standards found in Part 56, Title 30, Code of Federal Regulations. The general issues before me are whether the respondent violated the cited regulatory standards and, if so, the appropriate civil penalty to be assessed in accordance with section 110(i) of the Act.

Pursuant to notice, the case was heard at Fort Riley, Kansas, on March 14, 1995. At the hearing, Inspectors Curtis W. Dement and Eldon E. Ramage testified for the Secretary of Labor.

Mr. David S. Walker, the President of Walker Stone Company, Inc., and Mr. Clifford Moenning, the plant foreman, testified for respondent.

## STIPULATIONS

At the hearing, the parties entered the following stipulations into the record (Tr 8):

1. Walker Stone Company, Inc. is engaged in the operation of a limestone quarry and mill in the United States, and its mining operations affect interstate commerce.

2. David S. Walker is the owner and operator of Kansas Falls Quarry and Mill Mine, MSHA I.D. 14-00164-05521.

3. Walker Stone Company, Inc. is subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. " 801 et seq. ("the Act").

4. The Administrative Law Judge has jurisdiction in this matter.

5. The subject citations were properly served by a duly authorized representative of the Secretary upon an agent of respondent on the dates and places stated therein, and may be admitted into evidence for the purpose of establishing their issuance, and not for the truthfulness or relevancy of any statement asserted therein.

6. The exhibits to be offered by respondent and the Secretary are stipulated to be authentic but no stipulation is made as to their relevance or the truth of the matters asserted therein.

7. The proposed penalties will not affect respondent's ability to continue in business.

8. The operator demonstrated good faith in abating the violations alleged in Citation Nos. 4332611 and 4409171.

9. Walker Stone Company is a limestone mine operator with 97,089 hours of production in 1993.

10. The certified copy of the MSHA Assessed Violations History accurately reflects the history of this mine for the 2 years prior to the date of the citations.

**DISCUSSION, FINDINGS AND CONCLUSIONS**

Citation No. 4332611

Citation No. 4332611, issued on November 16, 1993, alleges a violation of the standard found at 30 C.F.R. ' 56.14107<sup>1</sup> and charges as follows:

The self cleaning tail pulley on the second conveyor between the crusher and the surge bin was not provided with a guard to protect persons from contacting the moving parts that can cause injury. A build up of material under the conveyor allows persons to become with in less than 6 1/2 foot or (1.98) meters of the underside of moving machinery.

Inspector Dement testified that he and Inspector Ramage, accompanied by his supervisor, located an unguarded tail pulley on a belt conveyor between the crusher and the surge bin. In his opinion, this was a hazard because he thought it possible for a person to get his clothing caught up in it, a coat sleeve, for example.

---

<sup>1/</sup> 30 C.F.R ' 56.14107 provides:

(a) Moving machine parts shall be guarded to protect persons from contacting gears, sprockets, chains, drive, head, tail, and takeup pulleys, flywheels, couplings, shafts, fan blades, and similar moving parts that can cause injury.

(b) Guards shall not be required where the exposed moving parts are at least seven feet away from walking or working surfaces.

Dement also testified that he determined the bottom of the unguarded tail pulley was about 6 1/2 feet off the ground. But he allowed that the space between the ground and the tail pulley had been closed due to spillage off the belt conveyor and that if the spillage had been cleaned up, the tail pulley would have been okay without the guard, because then it would have been at least 7 feet off the ground. In fact, if the spillage of crushed rock off the conveyor, which he estimated to be somewhere in the neighborhood of 24 inches thick, had been 6 inches less, the citation would not have been issued and the pulley, which had gone unguarded for the previous 24 years, would in all likelihood still be unguarded.

Inspector Ramage testified in corroboration of Dement's testimony and added that he had had a prior discussion with plant foreman Moenning in June of 1993, wherein he told Moenning that the 7 foot distance would have to be maintained in order to stay in compliance with the standard. He stated that he had observed the unguarded tail pulley many times, but had never cited it because the build-up of crushed rock underneath it had never placed the pinch point of the pulley within 7 feet of the ground at the time he observed it. On the cited occasion, however, he concurs that it was closer than the 7 feet required by the standard.

Mr. Moenning also testified on this point and agreed that the distance between pulley and ground was about 6 1/2 feet or between 6 1/2 and 7 feet. Moenning further opined that there is no work area or walkway for employees in the vicinity of that tail pulley, but he did state that the crushed rock spillage is cleaned up every day using a Bobcat.

The preponderance of the evidence is to the effect that the unguarded tail pulley was within 7 feet of the ground, represented by the top of the spillage pile. It is also uncontroverted that a person, operating a Bobcat, cleans up this spillage on a daily basis, and thereby is exposed to the hazard presented, however unlikely he might actually become entangled in the tail pulley. The Secretary concedes the point that it is unlikely. I would only add that in my opinion it is highly unlikely that anyone would get entangled in this tail pulley, but that is not relevant to the limited inquiry at bar.

Accordingly, I find a violation of the mandatory standard as cited and assess the proposed civil penalty of \$50.

Citation No. 4409171

Citation No. 4409171 was originally issued as a section 104(d)(1) order, but was later modified to a (d)(1) citation upon the vacation of the earlier (d)(1) citation on which it was based. It was originally issued on June 30, 1994, for an alleged violation of the mandatory standard found at 30 C.F.R. ' 56.14103(b)<sup>2</sup> and charges as follows:

The windshield of the light blue F150 Ford pickup was severely cracked. The cracked windshield impaired the operators vision. The pickup is seldom used but sun striking these cracks could temporarily blind the operator. The plant manager had driven the pickup on the afternoon of 6-29-94.

At times there were several customer trucks and a company front-end loader in the area the pickup was operated.

This is unwarrantable failure.

Inspector Ramage issued this citation to the operator because the windshield was cracked in the subject pickup truck, which obstructed the operator's view, in his opinion.

---

<sup>2/</sup> 30 C.F.R. ' 56.14103(b) provides:

(b) If damaged windows obscure visibility necessary for safe operation, or create a hazard to the equipment operator, the windows shall be replaced or removed. Damaged windows shall be replaced if absence of a window would expose the equipment operator to hazardous environmental conditions which would affect the ability of the equipment operator to safely operate the equipment.

The truck was operated at least once a day in an area where customer's trucks were also operating. A front-end loader also operated in this area and there was a plant man that could be on foot in the area as well.

There was a nonissue raised concerning the ownership of the truck. Mr. Moenning claimed that it was his personal pickup truck, given to him by Mr. Walker. However, a sign displayed on the side of the truck said: "Walker Stone Co., Inc., Chapman, Kansas."

In reality, it does not matter whose truck it is. Since it is being used on mine property, for mine business, it is the operator's responsibility to ascertain that it meets the applicable mandatory safety standards.

The only genuine issue of material fact to be tried in regard to this citation is whether or not the windshield was cracked severely enough to be considered unsafe for operation.

Based on the evidence in this record, most particularly the photographs of the truck (GX-6 and GX-7), which quite clearly depict the damage, I conclude that it is insufficient to establish that the windshield cracks noted by the inspector impaired the operator's visibility to any significant extent. In this regard, I also find Mr. Moenning's testimony that his vision was not impaired when he drove the truck to be credible. I also note that Inspector Ramage admitted that he never got into the truck and looked through the windshield himself to determine whether the cracks would affect the operator's visibility. Accordingly, the citation fails of proof and will be vacated herein.

#### ORDER

1. Citation No. 4332611 **IS AFFIRMED.**
2. Citation No. 4409171 **IS VACATED.**

3. The Walker Stone Company, Inc. **IS ORDERED TO PAY** the Secretary of Labor a civil penalty of \$50 within 30 days of the date of this decision.

Roy J. Maurer  
Administrative Law Judge

Distribution:

Ann M. Noble, Esq., Office of the Solicitor, U. S. Department of Labor, 1999 Broadway, Suite 1600, Denver, CO 80202-5716  
(Certified Mail)

Keith R. Henry, Esq., Weary, Davis, Henry, Struebing & Troup, 819 North Washington Street, P. O. Box 187, Junction City, KS 66441 (Certified Mail)

dcp