FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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August 12, 1996

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner	:	CIVIL PENALTY PROCEEDING
	:	Docket No. KENT 96-165
	:	A.C. No. 15-17231-03530
v.	:	
	:	Mine No. 9
MANALAPAN MINING CO., Respondent	:	

DECISION

Appearances: MaryBeth Bernui, Esq., Office of the Solicitor, U.S. Department of Labor, Nashville, Tennessee, for Petitioner;
Richard D. Cohelia, Safety Director, Manalapan Mining Company, Inc., Brookside, Kentucky, for Respondent.

Before: Judge Melick

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 Manalapan Mining Company, Inc. (Manalapan) with six violations of the mandatory standard at 30 C.F.R. § 50.20 for failing to report certain accidents and/or occupational injuries.

A settlement motion was presented at hearing with respect to four of the six violations. In this regard Respondent agreed to pay the proposed penalty of $200 for Citation Nos. 4252587 and 4252592 in full and the Secretary has agreed to reduce the penalty proposed for Citations No. 4252590 and 4252591 from $200 to $50. I have considered the representations and documentation submitted with regard to these violations and I conclude that the proffered settlement is acceptable under the criteria set forth in Section 110(i) of the Act. An order directing payment of the agreed amount will accordingly be incorporated in this decision.

As noted, two citations remain at issue. Citation No. 4252588, issued July 11, 1995, charges as follows:

> As a result of a Part 50 audit it is determined that a reportable injury occurred to Rodney Sturgill on 4/22/94. The injury was a low back strain which resulted

in extensive medical treatment, including follow-up visits and physical therapy. The injury was not reported to MSHA on Form 7000-1.

There is no dispute that the cited injury was not reported to MSHA as required and that it was indeed a "reportable" injury within the meaning of the cited standard. Respondent maintains only that "it did not realize that these injuries were reportable under Part 50 until after this case was already in litigation" (Joint Exhibit No. 1). The violation was alleged to be of low gravity and was not considered "significant and substantial." The issues before me are the degree of operator negligence and the amount of penalty to be assessed within the framework of Section 110(i) of the Act.

According to Inspector Adron Wilson of the Mine Safety and Health Administration (MSHA), during a "Part 50 audit" on July 11, 1995, at the Manalapan No. 9 Mine he examined the medical records of miner Rodney Sturgill. It was stipulated at hearing that the documents incorporated in Joint Exhibit No. 6 were the medical records on file with Manalapan's No. 9 Mine and the records examined during Wilson's audit. Date stamps on the documents show their receipt by Manalapan on June 20, 1994, and in July 1994. These documents clearly show that Sturgill received treatment by a physical therapist. According to Wilson eight visits to a physical therapist were recorded.

Wilson maintains that the violation was the result of high operator negligence. He notes that the documents in Manalapan's possession showed that the injury was reportable and this fact was made obvious by the large number of Sturgill's visits to a physical therapist and that the amount of workers' compensation exceeded $200. Wilson further considered, in this regard, the "large" number of violations (seven) he cited at this time. He noted that he averaged only two to three violations on audits at other mines. Wilson did not however compare the number of violations to the size of a particular mine's work force in his estimation.

According to Jim Enlow, Manalapan's Workers' Compensation Administrator, at the time of the noted injury and citation, company procedures were not adequate to flag an injury such as the one at bar for reporting to MSHA because it only became apparent that it was reportable upon receipt by the company of subsequent physical therapy reports. Under the system then existing, Enlow knew a condition was reportable only when the safety director, Richard Cohelia, wrote "reportable" on the initial "SF-1 Form" (a state workers' compensation form) prepared following an injury. Enlow conceded that he did not know the law

well enough to determine whether follow-up medical reports later showed that an injury became "reportable" for MSHA purposes. Presumably, as in this case, since the initial injury as reported on the "SF-1 Form" did not on its face indicate a "reportable" injury, that injury was not reported by Manalapan to MSHA. The fact that subsequent physical therapy reports thereupon made Sturgill's condition a "reportable" condition was not picked up under the existing Manalapan system.

Under the circumstances I find that Manalapan's failure to report Sturgill's injury was the result of a negligent business practice. I note that there is no history of violations of the instant standard at the Manalapan No. 9 Mine nor other evidence that Manalapan had prior notice of its deficient procedures. Manalapan also maintains that it has now corrected its reporting procedures to catch all "reportable" injuries including those that only later become reportable after subsequent medical treatment. A civil penalty of $150 is accordingly appropriate for the violation herein.

Citation No. 4252589, also issued by Inspector Adron Wilson on July 11, 1995, also charges a violation of the standard at 30 C.F.R. § 50.20. It alleges as follows:

> As a result of a Part 50 audit, it is determined that a reportable injury occurred to Claude Hickson 4/29/93. The injury is a degree six injury that requed [sic] splint and was not reported to MSHA on Form 7000-1. Mr. Hickson received three weeks restricted duty cleaning around the feeder and driving a ram car. This is a degree five injury.

In accordance with the stipulation of the parties (Joint Exhibit No. 1) I find that the injuries to Claude Hickson were indeed "reportable" within the meaning of the cited standard. Respondent maintains that "it did not realize that these injuries were reportable under Part 50 until after this case was already in litigation". Under the circumstances only the degree of operator negligence and the amount of penalty are at issue.

According to Inspector Wilson, Claude Hickson's medical records that he examined on July 11 at the Manalapan No. 9 Mine (Joint Exhibit No. 8) showed an "obvious reportable injury" requiring sutures. He therefore concluded that the failure to report the injury was the result of high operator negligence. It is noted, however, that what Inspector Wilson interpreted and relied upon to be the word "stitches", appears on the fifth page of Joint Exhibit No. 8 to be spelled "stnica". I find his reliance in this regard to have therefore been

misplaced. Moreover Richard Cohelia, Safety Director for Manalapan, testified credibly that he personally drove Hickson to the doctor after Hickson injured his hand and that Hickson received no stitches. Hickson also told Inspector Wilson that he did not recall having stitches.

Under the circumstances I do not find that Hickson had, in fact, received sutures or stitches as a result of the instant injury nor did the medical reports indicate that Hickson had received stitches for this injury. Accordingly it is apparent that the operator was not thereby placed on notice that Hickson suffered a "reportable" injury.

The Secretary also argues however that Manalapan was highly negligent because it should have known that Hickson suffered a "reportable" injury because he had been placed on "restricted duty" shoveling coal and was not performing his regular job of roof bolter operator. Cohelia testified however that subsequent to Wilson's Part 50 audit he talked to Ken Clark, the mine foreman for whom Hickson worked, who told him that they were, in fact, retreat mining at this time. Hickson was not then roof bolting but was shoveling coal because of the status of mining activity and not because of his injury. Moreover, if, indeed, Hickson had seriously injured his hand as alleged it would be highly unlikely that he would have been transferred from his regular job on a roof bolter to the task of shoveling coal. It may reasonably be inferred that with a hand injury Hickson could more easily have performed his regular job operating a roof bolting machine. Accordingly I do not find that Manalapan had been placed on notice that Hickson had a "reportable" injury until such time as it was so apprised by Wilson's audit. Under all the circumstances I find Manalapan chargeable with but little negligence. A civil penalty of $50 is accordingly appropriate for the violation.

ORDER

The citations at bar are affirmed and Manalapan Mining Company, Inc. is directed to pay the following civil penalties totaling $700 within 30 days of the date of this decision:

Citation No. 4252587 - $200, Citation No. 4252588 - $150,
Citation No. 4252589 - $50, Citation No. 4252590 - $50,
Citation No. 4252591 - $50, Citation No. 4252592 - $200.

Gary Melick
Administrative Law Judge

Distribution:

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