

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE N.W., SUITE 9500

WASHINGTON, D.C. 20001

May 13, 2008

WEBSTER COUNTY COAL, LLC,	:	CONTEST PROCEEDING
Contestant	:	
	:	Docket No. KENT 2008-469-R
v.	:	Citation No. 6696632; 01/04/2008
	:	
SECRETARY OF LABOR,	:	
Mine Safety and Health	:	Dotiki Mine
Administration, MSHA,	:	Mine ID 15-02132
Respondent	:	

**SUMMARY DECISION**

On March 12, 2008, Respondent, Webster County Coal, LLC, (WCC) filed a motion for summary decision in the captioned proceeding, seeking vacation of Citation No. 6696632. The citation alleges a violation of the standard at 30 C.F.R. § 50.20(a) and charges as follows:

The company failed to complete and submit an MSHA # 7000-1 (Mine Accident, Injury, and Illness Report) for the roof fall that occurred at crosscut #63 of the 3<sup>rd</sup> South East Sub-Mains cut through. The fall was found on December 4, 2007, by MSHA inspector.

30 C.F.R. § 50.20(a) provides, in relevant part as follows:

Each operator shall maintain at the mine office a supply of MSHA Mine Accident, Injury, and Illness Report Form 7000-1. ... The principal officer in charge of health and safety at the mine or the supervisor of the mine area in which an accident... occurs,... shall complete or review the form in accordance with the instructions and criteria in §§ 50.20-1 through 50.20-7.

An “accident”, as relevant hereto, is defined as “[a]n unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use; or, an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage.” 30 C.F.R. § 50.20(h)(8). “Active workings” are defined by the Secretary as “[a]ny place in a coal mine where miners are normally required to work or travel.” 30 C.F.R. § 75.2. WCC argues that it is entitled to summary decision because the cited roof fall was not, in any event, a reportable accident under Section § 50.20(a) since the area in question was not part of the mine’s “active workings” as defined in Section 75.2.

Under Commission Rule 67, 29 C.F.R. § 2700.67, a summary decision may be granted if the entire record, including the pleadings, depositions, answers to interrogatories, admissions, and declarations, shows: (1) that there is no genuine issue as to any material fact; and (2) that an that the moving party is entitled to summary decision as a matter of law. I find that WCC is entitled to summary decision because the undisputed facts do not establish as a matter of law that a violation existed as charged.

In this regard, it is undisputed that the area of the mine where the subject roof fall occurred had previously been “dangered off” by WCC on November 13, 2007, because of bad roof conditions. There is no dispute that miners were therefore not permitted as of that date to work or travel in the dangered off area. See *Cypress Empire Corporation* 12 FMSHRC 911, 917 (May 1990). Accordingly miners would not be “normally required to work or travel” in such an area. Thus, the area at issue was not, as of November 13, 2007, within the “active workings” of the mine under 30 C.F.R. § 75.2 and the roof fall that subsequently occurred was therefore not an “accident” within the meaning of 30 C.F.R. § 50.2(b)(8). Moreover the roof fall was accordingly not reportable under 30 C.F.R. § 50.20(a). There was therefore no violation of 30 C.F.R. § 50.20(a). The motion for summary decision must therefore be granted and Citation No. 6696632 must be vacated. Under the circumstances there is no need to discuss WCC’s alternative argument for vacating the citation.

In reaching this conclusion I have not disregarded the Secretary’s argument that, under the foregoing analysis, the operator could avoid reporting any roof fall simply by subsequently dangering off the affected area. The facts herein are distinguishable however in that it is undisputed in this case that the subject area was dangered off before, not after, the roof fall occurred.

### **ORDER**

Contest Docket No. KENT 2008-469-R is granted and Citation No. 6696632 is hereby vacated.

Gary Melick  
Administrative Law Judge  
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