

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

March 29, 1996

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING  
MINE SAFETY AND HEALTH :  
REVIEW COMMISSION, : Docket No. PENN 93-51  
Petitioner : A. C. No. 36-02713-03576  
v. :  
 : Leslie Tipple  
POWER OPERATING COMPANY, INC., :  
Respondent :

**DECISION ON REMAND**

Appearances: Linda Henry, Esq., Office of the Solicitor,  
U.S. Department of Labor, Philadelphia,  
Pennsylvania for Petitioner;  
Tim D. Norris, Esq., and Farrah Lynn Walker, Esq.,  
Stradley, Ronon, Stevens & Young, Philadelphia,  
Pennsylvania for Respondent.

Before: Judge Weisberger

On March 18, 1996, the Commission (18 FMSHRC, Docket  
No. PENN 93-51, March 18, 1996) issued a decision reversing my  
initial finding that the cited violation of 30 C.F.R. § 1710(e)  
(Citation No. 3709644) was not significant and substantial.  
The Commission remanded for reassessment of the civil penalty.

I reiterate my initial finding that Respondents negligence  
was less than moderate (16 FMSHRC 591,607). Taking cognizance of  
the Commission's finding that the violation was significant and  
substantial in that there was a reasonable likelihood of an eye  
injury of a reasonably serious nature. I find that a penalty of

\$500 is appropriate.

Avram Weisberger

Administrative Law Judge

Distribution:

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