

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, Suite 1000
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

March 4, 1998

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. PENN 98-14-M
Petitioner	:	A. C. No. 36-00184-05525
v.	:	
	:	
GLOBAL STONE PENROC, INC.,	:	
Respondent	:	Penroc

ORDER DENYING MOTION FOR SUMMARY DECISION

On February 17, 1998, Global Stone Penroc Inc., (Global) filed a motion for summary decision pursuant to Commission Rule 67, 29 C.F.R. Section 2700.67. Under Commission Rule 67(b), a motion for summary decision shall be granted only if the entire record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits shows: (1) that there is no genuine issue as to any material fact; and (2) that the moving party is entitled to summary decision as a matter of law. Global's motion addresses each of the six citations contested in the instant case.

Citations No. 4434034 and 4434035

In examining the respective documentation of the parties, it is obvious from the conflicting statements that there remain genuine issues as to material facts, i.e., whether the cited pumps were, as a factual matter, grounded or provided with equivalent protection within the meaning of the cited standard, 30 C.F.R. Section 56.12025. Accordingly, the motion for summary decision with respect to the instant citations must be denied.

Citations No. 4434002 and 4434004

Global argues that these citations should also be vacated as duplicative of the preceding citations. Global notes that both Citations No. 4434002 and 4434035 concern the grounding of a single piece of equipment, i.e., Global's 75 horsepower consolidated pit sump pump and that Citations No. 4434004 and 4434034 concern the grounding of another single piece of equipment i.e., Global's 200 horsepower consolidated pit sump pump.

The standard at 30 C.F.R. Section 56.12025 charged in Citations No. 4434035 and 4434034 provides in relevant part that "all metal enclosing or encasing electrical circuits shall be grounded or provided with equivalent protection . . ." The standard at 30 C.F.R. Section 56.12030 charged in Citations No. 4434002 and 4434004 provides that "when a potentially

dangerous condition is found it shall be corrected before equipment or wiring is energized." The Secretary argues that Global violated the cited standards in two ways, i.e., that it violated the standard at 30 C.F.R. Section 56.12025 by omission, in failing to ensure that the pumps were grounded and that it violated 30 C.F.R. Section 56.12030 by commission, in allowing the pumps to be energized with a potentially hazardous condition, the ground fault hazard.

The facts of this case are not unlike those in *Southern Ohio Coal Co., 4 FMSHRC 1459 (August 1982)* wherein the Commission held that violations which arise out of a single series of events may under certain circumstances constitute separate and distinct violations. In that case, the operator was cited for failure to remove temporary roof supports by remote methods and by then allowing miners to work under the unsupported roof. The operator argued that the violations should merge because the required duties were the same, i.e., that miners should not work under unsupported roof. In affirming the citations, the Commission held, however, that the standards were violated in two ways, by omission in failing to use remote methods, and by commission, by allowing the miners to work under unsupported roof. The Commission's reasoning in the *Southern Ohio* is applicable hereto and controlling. The cases cited by Global in its brief are distinguishable. Under the circumstances Global is not entitled to a summary decision as a matter of law with respect to the citations at issue.

Citation No. 4076955

Global notes that the above citation alleges that a "safe means of access was not provided to the engine compartment walkway" on a caterpillar front end loader Model 992-C, in violation of 30 C.F.R. Section 56.11001, thereby exposing employees to a falling hazard of approximately 3 ½ feet. The cited standard provides that "safe means of access shall be provided and maintained to all working places." While acknowledging that one of the manufacturer-installed steps to the engine compartment was missing and another may have been damaged at the time the citation was issued, Global nevertheless claims that it provided a step ladder as a safe means of access. The Secretary notes however and provides a supporting affidavit to demonstrate, that conflicting evidence exists concerning the circumstances under which miners might climb or otherwise access the engine compartment without the stairs or step ladder. In addition, there appears to be a factual dispute as to whether miners had in fact accessed the engine using unsafe means such as crawling or climbing.

Genuine issues clearly remain as to material facts and accordingly, Global is not entitled to a summary decision as matter of law.

Order No. 4076957

Global notes that the above order alleges that "21 bent steps were observed on the stairway" leading to the scalper screen, a "regularly traveled walkway." Global also notes that MSHA alleged that the "bent" steps exposed employees to a "significant and substantial" falling hazard and that this constituted an "unwarrantable failure." In connection with its motion herein,

Global submitted photocopies of photographs which it maintains shows that no steps were missing and that "bends" in individual steps did not pose a safety hazard. Global also quotes one of its employees purportedly stating that he "felt perfectly safe" using the steps.

In her response, the Secretary notes that the photographs are not verified and do not represent the hazard as it existed when cited. She further notes that the photographs do not accurately represent the condition of the steps at issue. She further notes that the condition was recorded by the company in its own examination book as constituting a hazard and was reported over a three-month period without any apparent remedial action. Finally, the Secretary notes that Inspector Amati observed the cited stairs and noted that twenty-one of the steps were significantly damaged and created a fall hazard.

Under the circumstances, there are clearly genuine issues as to material fact concerning Order No. 4076957, and Global's motion for summary decision must accordingly be DENIED.

Gary Melick
Administrative Law Judge
703-756-6261

Distribution:

John M. Strawn, Esq., Office of the Solicitor, U.S. Dept. of Labor, Gateway Bldg., Room 14480, 3535 Market St., Philadelphia, PA 19104 (Certified Mail)

Adele L. Abrams, Esq., Patton Boggs, L.L.P., 2550 M Street, N.W., Washington D.C. 20037 (Certified Mail)

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