

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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May 2, 1996

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEST 94-452
Petitioner : A.C. No. 42-01697-03669
 :
v. : Bear Canyon No. 1
 :
C.W. MINING COMPANY, :
Respondent :

DECISION

Appearances: Robert Cohen, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia,
for Petitioner;
Carl E. Kingston, Esq., Salt Lake City, Utah,
for Respondent.

Before: Judge Cetti

This case is before me upon a petition for assessment of civil penalties under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 801 et seq. the "Act." The Secretary of Labor on behalf of the Mine Safety and Health Administration, (MSHA), charges the Respondent, C.W. Mining Company, the operator of the Bear Canyon No. 1 Mine with four regulatory safety violations found in Part 75 Title 30 Code of Federal Regulations.

Respondent filed a timely answer denying each of the alleged violations. Pursuant to notice to the parties, this matter came up for hearing in Salt Lake City on April 2, 1996.

At the hearing, counsel for the Secretary stated that Citation No. 3588363 is a 104(d)(1) citation for an alleged inadequate preshift examination for the second east pillar section of the mine. As part and reason for the inadequate preshift examination this citation mentions two other citations, Nos. 3588361 and 3588362, not in this docket which describe the actual conditions that were cited but allegedly were not observed in the preshift examination. These two underlying citations were in another docket heard by a different judge, i.e. Docket No. WEST 94-380. With respect to the instant Citation No. 3588363, counsel for the Secretary stated:

That based on the decision in WEST 94-380 we reviewed again the instant citation for inadequate preshift examination and "because the two underlying citations have been changed now, and the (other) Judge held

that the loose coal dust violation was a Non S and S violation, we felt that we should reduce this particular (d)(1) citation to a 104(a) citation and remove the S and S findings and reduce the penalty from \$2,800.00 to \$200.00, and that's what the parties have agreed to."

The remaining three violations issued for a violation of sections 75.400, 75.1725(a) and 75.512 were discussed and re-evaluated. After speaking to the inspector, a more accurate picture of the conditions stated in the citations was obtained. The parties agreed to modify Citation No. 3588365 from a 104(d)(1) order to a 104(d)(1) citation and reduced the penalty to \$1,000.00 pointing out that the underlying 104(d)(1) citation for the order no longer existed.

The parties agreed on a penalty of \$500.00 for Citation No. 3588367 and \$500.00 for Citation No. 3588367.

Upon review of the record, including the information given at the hearing, I conclude the settlement agreed upon on the record at the hearing is consistent with the criteria in section 110(i) of the Act.

ORDER

In view of the foregoing it is **ORDERED**:

1. Citation No. 3588363 is modified to a 104(a) citation with the S&S finding deleted and as so modified is **AFFIRMED** and a penalty of \$200.00 is assessed for this violation.

2. Order No. 3588365 is modified to a 104(d)(1) citation and as so modified is **AFFIRMED** and a penalty of \$1,000.00 is assessed for the violation.

3. Citation No. 3588366 is **AFFIRMED** as written and a penalty of \$500.00 is assessed for this violation.

4. Citation No. 3588367 is **AFFIRMED** as written and a penalty of \$500.00 is assessed for this violation.

It is further ordered that C.W. Mining Company is shall **PAY** the Secretary of Labor civil penalties in the sum of \$2,200.00 within 30 days of this decision.

August F. Cetti
Administrative Law Judge

Distribution:

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