

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1730 K STREET N.W., 6TH FLOOR  
WASHINGTON, D.C. 20006

March 14, 1996

SAMUEL B. AND NANCY SANDERS, : CONTEST PROCEEDING  
on behalf of JOSEPH MARTIN :  
SANDERS, :  
Complainants : Docket No. WEST 95-538-RM  
: :  
v. : :  
: :  
SECRETARY OF LABOR, : Smokey Valley Common  
MINE SAFETY AND HEALTH : Operations of Round  
ADMINISTRATION, (MSHA), : Mountain Gold  
Respondent : Corporation

ORDER OF DISMISSAL

Before: Judge Merlin

On August 18, 1995, the Commission received a letter from Samuel and Nancy Sanders (hereafter referred to as the "complainants"). This letter was assigned the above-captioned docket number.

In their letter, the complainants state that they represent their deceased son who suffered fatal injuries at the Smokey Valley Common Operation. They request that the Commission review the decision of the Mine Safety and Health Administration (MSHA) to drop Citation Nos. 4140328, 4140327 and 4140322. They further seek verification of Citation No. 4140322 which they say was included in 4140321. Finally, they allege that a water truck of Christensen Boyles Corporation, their son's employer, should be cited for a mechanically unsafe transmission.

There was no indication that complainants had sent a copy of their letter to the Solicitor of the Department of Labor who represents MSHA before the Commission. Therefore, on September 20, 1995, an order was issued directing complainants to serve the Solicitor with a copy of the letter. The order also directed the Solicitor to file a response to the letter. On December 18, 1995, complainants filed a copy of a certified mail return receipt showing that the Solicitor received a copy the letter.

On January 16, 1996, complainant, Mrs. Sanders, filed a letter with the Commission, enclosing several documents. These documents included a letter dated December 20, 1995, from MSHA to

complainant, explaining the status of the citations and complainant's reply. Also included in the enclosures were statistics compiled by complainant with respect to accidents in Nevada.

The Solicitor failed to respond to the September 20 order. Accordingly, another order was issued on January 24, 1996, again directing the Solicitor to file a reply to complainants' August 18 letter.

On February 26, 1996, the Solicitor submitted his response. The Solicitor advises that the citations referred to by complainants were vacated. According to the Solicitor, it was necessary to vacate citations because some of them were duplicative. The Solicitor asserts that the Secretary has authority to vacate citations. In addition, the Solicitor states that the Secretary has the responsibility to investigate mine accidents to determine their cause and any health or safety violations. Lastly, the Solicitor maintains that Congress has not provided that relatives or survivors of victims have legal standing to contest a citation or order issued under the Mine Act.

It is well established that the Commission as an administrative agency has only the jurisdiction which Congress gives it. Lynn v. Payne, 476 U.S. 926, 937 (1986); Killip v. Office of Personnel Management, 991 F.2d 1564, 1569 (Fed Cir. 1993). The Commission has long recognized that it cannot exceed the limits of its authority as enacted by Congress. Kaiser Coal Corp., 10 FMSHRC 1165, 1169, (September 1988). It appears from the materials in the file that the complainants are concerned about citations which MSHA has issued and then vacated. Section 105(d) of the Act, 30 U.S.C. § 815(d), sets forth how and under what circumstances Commission review may be obtained of actions taken by MSHA. An examination of section 105(d) discloses that there is no provision for a miner or a miner representative to contest a citation. The Commission has held that there is no such right under the Act and stated that while it might be desirable for a miner or miner representative to have such a right, it is up to Congress to provide for it. UMWA v. Secretary of Labor, 5 FMSHRC 807 (May 1983). UMWA v. Secretary of Labor, 5 FMSHRC 1519, 1520 (September 1983). The Commission has also held that the Secretary has unreviewable discretion to vacate a citation and the Commission has no jurisdiction to review that determination. RBK Construction, Inc., 15 FMSHRC 2099, 2101 (October 1993).

The Commission does not have jurisdiction to consider complainants' other requests for relief. Section 105(d) does not give the Commission general oversight over MSHA's actions. The Commission has no authority with respect MSHA's internal practices and procedures. Wallace Brothers, 14 FMSHRC 586, 587 (April 1992); cf. Mid-Continent Resources, 11 FMSHRC 1015 (June 1989). Moreover, the Commission and the courts have recognized that the Secretary has wide discretion in enforcement. W-P Coal Company, 16 FMSHRC 1407, 1411 (July 1994); See, e.g., Bulk Transportation, 13 FMSHRC at 1360-61; Consolidation Coal, 11 FMSHRC at 1443; Brock v. Cathedral Bluffs Shale Oil Co., 796 F.2d 533, 538 (D.C. Cir. 1986). I cannot therefore, consider MSHA's alleged failure to cite a certain piece of equipment or its investigation of the accident. Kaiser Coal Company, supra.

In light of the foregoing, it is ORDERED that this case be DISMISSED.

Paul Merlin  
Chief Administrative Law Judge

Distribution: (Certified Mail)

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