

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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March 7, 2008

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 2006-524-M
Petitioner	:	A.C. No. 04-01787-090994
	:	
v.	:	
	:	Gordon Sand Company
GORDON SAND COMPANY,	:	
Respondent	:	

DECISION

Appearances: John D. Perez, Conference & Litigation Representative, Mine Safety & Health Administration, Vacaville, California, for Petitioner.

Before: Judge Manning

This case is before me on a petition for assessment of civil penalty filed by the Secretary of Labor, acting through the Mine Safety and Health Administration (“MSHA”), against Gordon Sand Company, pursuant to sections 105 and 110 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 815 and 820 (the “Mine Act”). Gordon Sand Company operates a construction sand and gravel operation in Santa Barbara County, California. It contested three citations issued by the Secretary. An evidentiary hearing was held in Oakland, California.

The Secretary’s representative appeared at the scheduled hearing along with his witness but nobody from Gordon Sand Company was present. I called George Gordon III, the chief executive officer of the company, at his office in Hayward, California, and was advised that he was not in the office at that time. About ten minutes later, he called me back and advised me that he had forgotten about the hearing. I advised him that I would be holding the company in default.

Prior to the hearing, the Secretary agreed to vacate Citation Nos. 6390416 and 6390417. (Secretary’s Response to Prehearing Order). As a consequence, the scheduled hearing only concerned Citation No. 6390415, which alleges a violation of 30 C.F.R. § 56.14107(a). I hereby find Gordon Sand Company in **DEFAULT** with respect to that citation. Citation No. 6390415 is affirmed in all respects as is the Secretary’s proposed penalty for the citation. (Tr. 4).

For the reasons set forth above, Citation No. 6390415 is **AFFIRMED**, and Gordon Sand Company is **ORDERED TO PAY** the Secretary of Labor the sum of \$177.00 within 30 days of the date of this decision.

Richard W. Manning
Administrative Law Judge

Distribution:

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RWM