

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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FALLS CHURCH, VIRGINIA 22041

October 9, 1997

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 97-85-M
Petitioner	:	A.C. No. 24-02089-05501
v.	:	
	:	Yukon #1 Mine
YUKON NO. 1 MINING CLAIM,	:	
Respondent	:	

## DECISION

Appearances: Edward Falkowski, Esq., Office of the Solicitor, U.S. Department of Labor, Denver, Colorado, for Petitioner;  
Glenn Davis, Owner-Operator, Yukon Mine, Moccasin, Montana;  
Mark N. Savitt, Esq., and Willa Perlmutter, Esq., Patton Boggs, L.L.P., Washington, DC, for Respondent.

Before: Judge Weisberger

This case is before me based on a Petition for Assessment of Penalty filed by the Secretary of Labor (Petitioner) alleging violations by Yukon No. 1 Mining Claim (Respondent) of various mandatory safety standards set forth in Title 30 of the Code of Federal Regulations. Pursuant to Notice the case was scheduled for hearing on August 26, 1997. At the hearing, Glenn Davis, owner-operator of Respondent, who had been representing Respondent, advised the court that he intended to have Respondent represented by Mark Savitt, Esq. A conference call was arranged between the court, counsel for Petitioner, and Mark Savitt. The latter indicated he would represent Respondent. Counsel for both parties conferred and attempted to limit the issues to be litigated. The matter was continued to allow counsel to continue to negotiate.

Counsel have stipulated the following:

1. Respondent withdraws its contest to the citations involved in this proceeding. All information contained in the citations (including any special findings and any narrative information) may be regarded as established. The only remaining issue with respect to each citation is the appropriate penalty.
  - a. History. Respondent has no previous MSHA inspection and violation

history.

b. Size of business. The mine is a small mine. Four individuals are involved in the business. The operator has reported to MSHA that: 1. during the third quarter of 1996, two employees worked a total of 240 hours at the mine; 2. during the first quarter of 1997, no work was performed at the mine; and 3. during the second quarter of 1997, two employees worked a total of 96 hours at the mine.

c. Negligence. Each of the violations involved in this case resulted from the respondent's moderate negligence.

d. Gravity. As indicated in lines 10(a), 10(b), and 10(c) on each citation, the gravity of each violation involved in this case is as follows:

Citation 4645194: An injury was unlikely to occur as a result of the violation. If an injury did occur as a result of the violation, it is reasonably likely that the injury would result in lost workdays. The violation was non-significant-and-substantial (A non-S&S@).

Citation 4645195: An injury was unlikely to occur as a result of the violation. If an injury did occur as a result of the violation, it is reasonably likely that the injury would result in lost workdays. The violation was non-S&S.

Citation 4645196: An injury was unlikely to occur as a result of the violation. If an injury did occur as a result of the violation, the injury was not reasonably likely to result in lost workdays. The violation was non-S&S.

Citation 4645197: An injury was unlikely to occur as a result of the violation. If an injury did occur as a result of the violation, it is reasonably likely that the injury would result in lost workdays. The violation was non-S&S.

Citation 7900303: There was no likelihood that an injury would occur as a result of the violation. The violation was non-S&S.

Citation 7900304: There was no likelihood that an injury would occur as a result of the violation. The violation was non-S&S.

Citation 7900305: An injury was reasonably likely to occur as a result of the violation, and if an injury did occur, it is reasonably likely that the injury would be fatal. The violation was significant and substantial (AS&S@).

Citation 7900306: An injury was reasonably likely to occur as a result of the violation, and if an injury did occur, it is reasonably likely that the would result in lost workdays. The violation was S&S.

Citation 7900307: An injury was unlikely to occur as a result of the violation. If an injury did occur as a result of the violation, it is reasonably likely that the injury would result in lost workdays. The violation was non-S&S.

Citation 7900308: An injury was reasonably likely to occur as a result of the violation, and if an injury did occur, it is reasonably likely that the injury would be fatal. The violation was S&S.

Citation 7900309: An injury was unlikely to occur as a result of the violation. If an injury did occur as a result of the violation, it is reasonably likely that the injury would result in lost workdays. The violation was non-S&S.

Citation 7900310: An injury was unlikely to occur as a result of the violation. If an injury did occur as a result of the violation, it is reasonably likely that the injury would result in lost workdays. The violation was non-S&S.

Citation 7900311: An injury was unlikely to occur as a result of the violation. If an injury did occur as a result of the violation, it is reasonably likely that the injury would result in lost workdays. The violation was non-S&S.

Citation 7900312: An injury was unlikely to occur as a result of the violation. If an injury did occur as a result of the violation, it is reasonably likely that the injury would result in lost workdays. The violation was non-S&S.

Citation 7900313: An injury was unlikely to occur as a result of the violation. If an injury did occur as a result of the violation, it is reasonably likely that the injury would result in lost workdays. The violation was non-S&S.

Citation 7900314: An injury was reasonably likely to occur as a result of the violation, and if an injury did occur, it is reasonably likely that the injury would be fatal. The violation was S&S.

Citation 7900315: An injury was reasonably likely to occur as a result of the violation, and if an injury did occur, it is reasonably likely that the injury would be fatal. The violation was S&S.

Citation 7900317: An injury was unlikely to occur as a result of the

violation. If an injury did occur as a result of the violation, it is reasonably likely that the injury would result in lost workdays. The violation was non-S&S.

2. On September 23, 1997, Respondent filed its Motion for Reduction of Proposed Assessment, attaching documentary evidence in support of the motion. The Secretary stipulates that the court may consider, to the extent it is appropriate to do so, Respondent's documentary evidence for the purpose of determining an appropriate penalty in this case. The Secretary notes that she intends to file a brief response to the motion for reduction of penalties.

Based on the parties' stipulations, I find that Respondent violated the mandatory standards cited in the citation at issue, and affirm these citations as written.

I further find, based on the parties' stipulation, that the violations cited in the following citations were of a moderate level of gravity: 4645194, 4645195, 4645196, 4645197, 7900306, 7900307, 7900309, 7900310, 7900311, 7900312, 7900313, and 7900317. I find that the violations cited in citation Nos. 7900305, 7900308, 7900314, and 7900315 were of a high level of gravity. I find that the violations cited in citations Nos. 7900303, and 7900304, were of a low level of gravity. I find, based on the parties' stipulations, that each of the violations cited resulted from Respondent's moderate negligence. I find, based on the parties' stipulations, that Respondent had no previous violation history and that the subject mine is a small mine. These factors serve to mitigate the amount of penalty to be assessed.

On September 26, 1997, Respondent filed a Motion for Reduction of Proposed Assessment. Attached to this motion are signed statements from four individuals Clare E. Knight, Glenn Davis, Jack Hughes, and Lee Bliss. Each of these statements contain the following language: AI declare under penalty of perjury that the foregoing is true and correct. The declaration indicates that the mine at issue is owned and operated by a partnership consisting of Davis, Bliss, Knight, and Hughes. The declarations indicate that the mine is not in production, and does not have any income. It is asserted that the mine has no assets aside from \$300 in a bank account, and owes approximately \$4,000. Tax returns of Bliss, Davis, Knight, and Hughes indicate minimal income. I find that the imposition of a penalty would have an adverse effect on Respondent's ability to continue in business considering all the above factors, I find that the following penalties are appropriate for the violations cited in the following citations: 4645194 - \$40; 4645195 - \$40; 4645196 - \$40; 4645197 - \$40; 7900303 - \$20; 7900304 - \$20; 7900305 - \$88; 7900306 - \$40; 7900307 - \$40; 7900308 - \$88; 7900309 - \$40; 7900310 - \$40; 7900311 - \$40; 7900312 - \$40; 7900313 - \$40; 7900314 - \$88; 7900315 - \$88; and 7900317 - \$40.

#### ORDER

It is ordered that, within 30 days of this decision, Respondent shall pay a total civil

penalty of \$872.

Avram Weisberger  
Administrative Law Judge

**Distribution:**

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