

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

January 23, 1995

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. YORK 94-14-M
Petitioner : A.C. No. 30-00066-05523
v. :
: Lake Placid
COLD SPRINGS GRANITE COMPANY, :
Respondent :

DECISION

Appearances: James A. Magenheimer, Esq., Office of the Solicitor, U.S. Department of Labor, New York, New York, for Petitioner;
Steven R. McCown, Esq., Little, Mendelson, Fastiff & Tichy, Dallas, Texas, for Respondent.

Before: Judge Weisberger

This case is before me based upon a Proposal for Assessment of Civil Penalty filed by the Secretary of Labor (Petitioner) alleging a violation by Cold Springs Granite Company of 30 C.F.R. ' 56.3400. ¹ A hearing on this matter was held in Burlington, Vermont, on November 1, 1994. Subsequent to the hearing, Petitioner, filed a Post Hearing Memoranda on December 22, 1994. Respondent's Brief was received on December 28, 1994.

Findings of Fact and Discussion

¹Initially the proposal also sought a penalty for the violation of 30 C.F.R. ' 50.10 (Citation No. 4079780). Subsequently, the parties filed a joint motion for approval of a settlement of this citation. By order dated June 23, 1994, Chief Judge Merlin issued an order approving the settlement and ordering dismissal of this citation. Subsequent to the filing of the proposal, Petitioner filed a motion to amend the citation at issue (No. 4079928) to change the standard allegedly violated from 30 C.F.R. ' 56.16001 to 30 C.F.R. ' 56.3400. On April 18, 1994, Chief Judge Merlin issued an order granting the motion to amend.

Cold Springs Granite Company ("Cold Springs") operates the Lake Placid Blue and Green Quarry in Ausable Forks, New York. In general, the first step in Cold Springs granite mining operation is the drilling of the loaf² to be blasted from the quarry. In the next step, the granite loaf is blasted from the quarry. After the loaf has been blasted and freed from the earth or the quarry, it is then split at the quarry site by wedges or explosives in order to break off smaller pieces of material. Those pieces of material that are broken off and squared off and are of transportable size, are removed from the quarry site to be placed in inventory for shipping to customers. The material from the loaf that have not been squared off (blocks) are transported to the finishing yard where they are washed and split further.

On March 12, 1993, Joseph C. Cayea, a rock driller, was assigned to split blocks at the finishing yard. The blocks of granite were about four or five feet high laying on their side in close proximity to each other. The blocks had been pre-drilled by machine. From a position standing on top of the blocks of granite, Cayea split the blocks of granite by using tools he called "wedges" and "half-rounds." The half-rounds are rod-like tools that start thin on the top, and become larger on the bottom. Cayea took two of the half-rounds together and slid them into every other pre-drilled hole. Then he took the wedge and put it between the half-rounds, and pounded the half-rounds into the pre-drilled holes until the blocks were fully cracked. Exhibit Nos. P-11, 12 and 13 are illustrations of the blocks of granite viewed from different angles, and demonstrates how the accident occurred.

Following the above procedure, Cayea split the first block (Block No. 1 as depicted in the diagrams). Then he similarly split another block (Block No. 3 as indicated in Exhibit P-11),³ leaving a larger piece, and a smaller piece (Block B).⁴

²The loaf is a piece of granite approximately 80 to 100 feet wide, 15 to 20 feet deep, and 15 to 20 feet high.

³In response to direct examination, Cayea referred to the three blocks of granite that he was splitting on the day of the accident as first, second and third. These particular blocks are marked as Nos. 1, 3 and 4, respectively, in the diagrams (Exhibits P-11, 12 and 13).

⁴Block B measured 51 inches wide across the top, but tapered down to a width of only 34 inches at the bottom. It was laying on top of a block of wood, 6 inches by 6 inches, that extended only 10 inches lengthwise under Block B. The wooden had been placed under No. 3 in order to make it level for proper

According to Cayea, after he split Block No. 3, it was stable. The larger piece from No. 1 was removed from the area leaving the smaller piece (Block A), which remained upright.

Cayea proceeded to split the third block of granite (Block No. 4 in diagrams Exhibits P-12 and 13). He began using the half-rounds and wedges as he had done before, but realized that he needed additional wedges. Cayea jumped down from the block of granite he was working on, and walked along the ground in front of Block A in order to retrieve the wedges he needed. When Cayea came next to Block A, it suddenly tipped over on top of him. It appears that Block B had suddenly shifted and fell onto Block A which tipped over and fell onto Cayea. Cayea sustained serious injuries to both legs, which were subsequently amputated.

On March 15, 1993, Edward M. Blow, an MSHA Inspector, inspected the subject site to investigate the accident that had occurred on March 12. Prior to becoming an MSHA Inspector, Blow had worked for a granite company for 25 years. One of the jobs he performed was splitting rocks. Blow opined that Block B had been split from the longer block, but had not immediately fallen, as it had been connected by frozen material. Blow opined that because the bottom of Block B extended 24 inches beyond the support provided by the wooden block, and the top of Block B extended 41 inches beyond that support (see Exhibit P-13), the frozen bond between Block B and the earth was released causing Block B to tip over, and hit Block A causing it to fall on Cayea.

Blow issued a citation alleging a violation of 30 C.F.R. ' 56.3400, which provides that, "Prior to secondary breakage operations, material to be broken, other than hanging material, shall be positioned or ed to prevent movement which would endanger persons in the work area. Secondary breakage shall be performed from a location which would not expose persons to danger."

In essence, it is Petitioner's position that the first sentence of Section 56.3400 was violated because neither Blocks A nor B were blocked to prevent a movement, which endangered Cayea. Petitioner also alleges that the second sentence of Section 56.3400, supra, was violated because Cayea's work was not being performed from a location which would not expose him to danger.

splitting.

The blocking requirements of the first part of Section 56.3400, supra, apply "prior to secondary breakage operations." The safe location requirements of the second sentence of Section 56.3400 pertain to the performance of "secondary breakage." The regulations do not define the term "secondary breakage". However, the plain language of Section 56.3400 supra, makes it obvious that its intent is to protect miners from the hazards associated with being endangered by materials to be broken that were not positioned or ed to prevent movement. This hazard was clearly present in the splitting stage at issue, at least to the same degree as that presented in the other breaking operations that preceded the one at issue. The plain language of Section 56.3400, supra, further manifests an intention to protect miners from being exposed to danger from secondary breakage being performed from a location exposing them to danger. Clearly such a danger existed in the instant splitting operation at least to the same degree as that presented in the operations that had been performed up to this point.⁵ Although there was some material, i.e., a wooden block, placed under Block No. 3, it was not of a sufficient length under the base of Block B to have prevented it from falling and knocking over and Block A, which than led to Cayea's injuries. I thus find that Respondent violated Section 56.3400, supra.

Within the framework of the above evidence, I find that the violation was significant and substantial. I find that a penalty of \$157 is appropriate.

Avram Weisberger
Administrative Law Judge

Distribution:

⁵The removal of a loaf from the ground or quarry is the initial step in the operation which is followed by the splitting of the loaf at the quarry site, and then further splitting at the finishing yard. The latter breaking operation performed by Cayea was thus secondary. (Reference is made to the common meaning of the word secondary as set forth in Webster's New International Dictionary, as pertinent, as follows: "2a: immediately derived from something original, primary, or basic f.1: not first in order of occurrence or development... . 3a: of or relating to the second order or stage in a series."

James A. Magenheimer, Esq., Office of the Solicitor,
U.S. Department of Labor, 201 Varick Street, New York, NY 10014
(Certified Mail)

Steven R. McCown, Esq., Little, Mendelson, Fastiff & Tichy,
300 Crescent Court, Suite 600, Dallas, TX 75201 (Certified Mail)

/ml