

CCASE:  
MSHA V. HELVETIA COAL, KEYSTONE COAL MINING  
DDATE:  
19790423  
TTEXT:

FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION  
WASHINGTON, D.C.  
April 23, 1979

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),

v. Docket Nos:

HELVETIA COAL COMPANY, PITT 79-12-P

KEYSTONE COAL MINING CORPORATION. PITT 79-5-P

ORDER

On April 19, 1979, Helvetia Coal Company and Keystone Coal Company jointly filed a motion to strike certain materials and references to them from the Secretary of Labor's petition for discretionary review. Helvetia and Keystone moved that the Commission strike an affidavit of Donald K. Walker, Chief of the Health and Safety Analysis Center of the Mine Safety and Health Administration, and a letter from Robert B. Lagather, Assistant Secretary for Mine Safety and Health, to the President of the Bituminous Coal Operators' Association, Inc. These evidentiary materials were submitted as part of the Secretary's petition, but were not a part of the record before the administrative law judge. Helvetia and Keystone assert that consideration of this extra-record evidentiary material would contravene section 113(d)(2)(C) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §823(d)(2) (C). That section states in part:

For the purpose of review by the Commission under paragraph (A) or (B) of this subsection, the record shall include: (i) all matters constituting the record upon which the decision of the administrative law judge was based; (ii) the rulings upon proposed findings and conclusions; (iii) the decision of the

administrative law judge; (iv) the petition or petitions for discretionary review, responses thereto, and the Commission's order for review; and (v) briefs filed on review. No other material shall be considered by the Commission upon review. [Emphasis added.]

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We agree that the evidentiary material attached to the petition may not be considered by the Commission, and we accordingly strike it and references to it from the Secretary's petition.