

CCASE:

PETER WHITE COAL V. MSHA

DDATE:

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TTEXT:

FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION

WASHINGTON, D.C.

May 2, 1979

PETER WHITE COAL MINING

CORPORATION,

v.

SECRETARY OF LABOR,

MINE SAFETY AND HEALTH

ADMINISTRATION (MSHA),

Docket Nos. HOPE 78-374-375

394-402, 431-432,

434-443, 445, 449-

450, 452-453, 376-

382, 390-393, 495-

496, 498, 509, 535-

544, 544-558, 594

DECISION

Peter White Coal Mining Corporation seeks review of citations issued to it under section 104(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1978) ["the 1977 Act"].

The citations alleged violations of various mine safety and health standards, and included special findings, made under section 104(e) of the 1977 Act, that the alleged violation "could have significantly and substantially contributed to the cause and effect of ... mine health or safety hazards." The alleged violations have been abated.

The Administrative Law Judge dismissed Peter White's applications for review on the ground that the citations were not reviewable until after the Secretary proposed penalties. The Commission granted Peter White's petitions for discretionary review. We reverse and remand.

The issue in these cases is whether an operator served with a citation for a violation that has been abated may immediately contest the allegation of violation in the citation. In *Energy Fuels Corp.*, No. DENV 78-410 (May 1, 1979), we fully examined that question and answered it in the affirmative. See also, *Helvetia Coal Co.*, No. PITT 78-322 (May 1, 1979). We viewed the insertion by a congressional conference committee of the phrase "or citation" into section 105(d) of the 1977 Act to have been most likely intended to permit an operator to immediately contest a citation. We also weighed the interests of the persons and agencies affected by this controversy, and we concluded that a fair balance between those interests could be struck in favor of permitting an operator to immediately contest citations. Our analysis of the interests of the operator rested partially on the fact that the citation in *Energy Fuels* contained special findings under section 104(d) of the 1977 Act, and thus exposed the operator to a possible withdrawal order before a

penalty could be proposed. Although the citations here have special findings under section 104(e), rather than section 104(d),

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the Possible consequences of special findings under both sections are similar enough that the cases should be treated the same for this purpose. As with a citation with special findings under section 104(d), such as the citation in Energy Fuels, a withdrawal order may be issued before a penalty is proposed. We also observe that the miners will not be adversely affected if we permit the operator to immediately contest the citations, and that the Secretary and the Commission may relieve possible administrative burdens through the techniques we noted in Energy Fuels.

Accordingly, the judges' decisions are reversed. The cases are remanded for further proceedings consistent with this opinion.

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Commissioner Lawson, dissenting:

For the reasons stated in my dissenting opinion in Energy Fuels Corp., No. DENV 78-410, I would deny immediate review of all citations for which the alleged violation has been abated.