

CCASE:
PETER WHITE COAL MINING V. MSHA
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
May 2, 1979

PETER WHITE COAL MINING CORPORATION,
v. Docket Nos. HOPE 78-444
HOPE 78-451

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

DECISION

Peter White Coal Mining Corporation has applied for review of two citations issued 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 mandatory safety standards, but did not contain special findings under either sections 104(d) or (e) of the 1977 Act. The parties agree that the alleged violations have been abated. Administrative Law Judge Stewart dismissed the applications for review on the ground that the citations were not reviewable until the Secretary proposed a penalty. On October 11, 1978, the Commission granted Peter White's petition for discretionary review.

The issue here 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 (May 1, 1979), and *Helvetia Coal Co.*, No. PITT 78-322 (May 1, 1979), we examined that question and answered it in the affirmative. We accordingly reverse the Judge's decision and remand for further proceedings consistent with those opinions."

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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.