

CCASE:

MSHA V. MULZER CRUSHED STONE

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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
WASHINGTON, DC

September 29, 1980

SECRETARY OF LABOR

MINE SAFETY AND HEALTH

ADMINISTRATION (MSHA)

v.

Docket No. LAKE 80-201-M

MULZER CRUSHED STONE COMPANY

DIRECTION FOR REVIEW AND ORDER

The petition for discretionary review filed by Mulzer Crushed Stone Company is granted with respect to the following issue raised: whether a prejudicial error of procedure was committed by the Administrative Law Judge in that the mine operator was denied an opportunity to submit a brief with proposed findings and conclusions prior to issuance of the decision.

An August 12, 1980, order issued by the Judge set September 15, 1980, as the deadline for filing post-hearing briefs. Prior to receiving any briefs the decision was issued on September 3rd. A post-hearing brief was received at the Commission from counsel for Mulzer on September 11th. On the face of the record before us, it does appear that Mulzer, as well as the Secretary, was improperly denied an opportunity to submit its brief prior to the issuance of the judge's decision. Accordingly, the judge's decision of September 3rd is vacated, and the case is remanded for the sole purpose of permitting the judge to reconsider his decision in view of briefs submitted.

Richard V. Backley, Commissioner

Frank E. Jestrab, Commissioner

A. E. Lawson, Commissioner

Marian Pearlman Nease, Commissioner

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