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MSHA V. U.S. STEEL
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
January 9, 1981

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v. Docket No. HOPE 75-708

UNITED STATES STEEL CORPORATION IBMA No. 77-40

DECISION

This proceeding was initiated when United States Steel Corporation filed an application for review of an order of withdrawal issued pursuant to section 104(c)(2) of the Federal Mine Health and Safety Act of 1969. After hearing, the administrative law judge affirmed the order and dismissed the operator's application for review. U.S. Steel appealed to the Board of Mine Operations Appeals (BMOA). BMOA acted on that appeal on March 15, 1977, remanding the case to the administrative law judge for a specific finding of fact to be made as to whether there had been a complete inspection of the mine subsequent to the issuance of the section 104(c)(1) order, and prior to the inspection which precipitated the issuance of the withdrawal order under appeal. The administrative law judge on remand found that the applicant (operator) had not established by a preponderance of the evidence that there had been a complete inspection.

U. S. Steel again appealed to BMOA. That appeal was pending before the Board as of March 8, 1978, and is therefore before the Commission for disposition. 30 U.S.C.A. 961 (1978).

In CF&I Steel Corporation, Docket No. DENV 76-46 (December 2, 1980), we held that "a prerequisite to the issuance of an order of withdrawal under section 104(c)(2) of the 1969 Coal Act was the absence of an intervening 'clean' inspection of the entire mine, and

that it was MESA's obligation to present a prima facie case of that fact to sustain the order." In this case, the judge erred in not requiring MESA to present a prima facie case on the issue of an intervening "clean" inspection. We have reviewed the record and find that MESA did not establish a prima facie case of the absence of such an inspection.

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Therefore, in accordance with our decision in CF&I Steel, the decision of the judge is reversed and the order of withdrawal is vacated.

Richard V. Backley, Chairman

Frank F. Jestrab, Commissioner

A. E. Lawson, Commissioner

Marian Pearlman Nease, Commissioner

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Distribution

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