

CCASE:

MSHA V. PHELPS DODGE

DDATE:

19811204

TTEXT:

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

December 4, 1981

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

Docket No. WEST 79-349-DM

on behalf of Johnny Chacon

v.

PHELPS DODGE CORPORATION
ORDER

The Secretary has petitioned for reconsideration of our decision issued November 23, 1981. The Secretary argues that the decision was based largely on our resolution of factual issues not properly before us. The Secretary relies on our direction for review, which stated in part, "The issues on review are limited to those raised in section IV(E) of [Phelps Dodge's] petition [for discretionary review]." That section of Phelps Dodge's lengthy petition raised issues concerning the judge's application of the burdens of proof in this case. The issue reviewed was a broad one requiring discussion of both legal and factual questions. In declining to review a section of the petition challenging ten specific factual findings, we did not don a straightjacket. Rather, we selected a statement of the issue designed to focus the parties' attention on whether the appropriate analytical and evidentiary tests for a discrimination case had been properly applied. The fact that Phelps Dodge raised a question regarding a particular finding of the judge in one subsection of its petition did not preclude evaluation of that finding as an integral part of the section directed for review. Neither §113 of the Mine Act, 30 U.S.C. §823 (Supp. III), nor the Commission's rules require or encourage rigid rules of pleading.

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To determine whether the judge properly applied the various burdens of proof in this case, it was necessary to examine the evidentiary factors he considered in arriving at his conclusions. Indeed, the Secretary himself discussed facts in his brief to the Commission. Discrimination cases involve many mixed factual and legal questions. We could not determine whether the Secretary "had sustained [his]

burden of proof and/or burden of establishing a prima facie case" --
the essential question directed for review--without examining the
evidence pertaining to the prima facie case and the operator's defense
against that case.

Accordingly, the petition for reconsideration is denied.