

CCASE:  
SOL (MSHA) V. CONSOLIDATION COAL

DDATE:  
19850429

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

April 29, 1985

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

Docket Nos. WEVA 83-280-R  
WEVA 83-281-R  
WEVA 84-16-R

v.  
CONSOLIDATION COAL COMPANY

BEFORE: Backley, Acting Chairman; Lastowka, Nelson,  
Commissioners

ORDER

BY THE COMMISSION:

On April 9, 1985, the Commission issued a notice informing the parties that the petition for discretionary review filed in this matter by Consolidation Coal Company (Consol) had not been granted and, accordingly, that the decision of the administrative law judge was the final order of the Commission. 30 U.S.C. • 823 (d)(1).

On April 24, 1985, the Commission received a "petition for re-consideration" from Consol. The petition for reconsideration states:

At the present time, the Commission is composed of three members. If the Commission presently consisted of its statutory five members, it would be more likely that this non-frivolous appeal, which is of great importance to Consol specifically and the mining industry in general, would be ordered reviewed.

Consol requests that the Commission reconsider and grant its petition.

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Consol correctly observes that two vacancies presently exist on this five-member Commission. We note, however, that section 113(c) of the Mine Act authorizes panels of three members to exercise "any or all of the powers of the Commission". 30 U.S.C. • 823(c). Consol's petition for discretionary review, the administrative law judge's decision, and the entire record were fully considered by each of the present members of the Commission. No two members, however, voted to grant the Petition and the judge's decision became the final order of the Commission 40 days after its issuance. 30 U.S.C. • 823(d)(1) and (2). No reasons have been advanced by Consol justifying the reconsideration it seeks. Further review of the Commission's final

order is available in an appropriate U.S. Court of Appeals. 30 U.S.C.

□ 816(a)

Accordingly, the petition for reconsideration is denied.

Richard V. Backley, Acting Chairman

L. Clair Nelson, Commissioner

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