

CCASE:

ODELL MAGGARD V. CHANEY CREEK COAL,  
MSHA (MAGGARD) V. DOLLAR BRANCH COAL, CHANEY CREEK COAL  
DDATE:

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TTEXT:

FMSHRC-WDC  
September 30, 1987

ODELL MAGGARD

v. Docket No. KENT 86-1-D

CHANEY CREEK COAL CORPORATION

and

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
on behalf of ODELL MAGGARD

v. Docket No. KENT 86-51-D

DOLLAR BRANCH COAL CORPORATION  
and CHANEY CREEK COAL COMPANY

BEFORE: Ford, Chairman; Backley, Doyle, Lastowka and Nelson,  
Commissioners

ORDER

BY THE COMMISSION:

On August 25, 1987, the Commission issued its decision in this matter. On September 15, 1987, the Commission received from counsel for respondents a Motion for Reconsideration and a Motion to Amend Petition for Discretionary Review. Oppositions to both motions have been received from complainant Odell Maggard and from the Secretary of Labor. The operators request the Commission to reconsider its denial of their prior motion seeking dismissal of Dollar Branch Coal Corporation ("Dollar Branch") as a party on the asserted grounds that Dollar Branch had no direct employment

relationship with Maggard. Upon consideration of the motions and the oppositions, the motions are denied.

We previously ruled that we were barred as a matter of law by the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1982), from considering this issue because it was not included in the operators' petition for discretionary review. *Odell Maggard v. Chaney Creek Coal Corporation, etc.*, 9 FMSHRC , Nos. KENT 86-1, etc., slip op. at 2 n. 2 (August 25, 1987). We adhere to that ruling. We note that the operators also failed to raise this issue before the Commission's administrative law judge, and we conclude that counsel for the

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operators has failed to show why the facts asserted by Dollar Branch relating to its involvement in this case could not have been ascertained and acted upon in a timely manner.

Ford B. Ford, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

James A. Lastowka, Commissioner

L. Clair Nelson, Commissioner

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