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KAISER COAL V. MSHA, UMWA
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
September 27, 1988

KAISER COAL CORPORATION

v. Docket No. WEST 88-131-R

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

and

UNITED MINE WORKERS OF AMERICA

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

DECISION

BY THE COMMISSION:

The controlling question presented in this matter is whether the Commission has jurisdiction to entertain an application for declaratory relief independent of any of the enforcement or contest proceedings or other forms of action authorized under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1982) (the "Mine Act" or "Act"). Commission Administrative Law Judge Gary Melick concluded that he had jurisdiction to consider Kaiser Coal Corporation's ("Kaiser") application pursuant to section 5(d) of the Administrative Procedure Act, 5 U.S.C. § 551 et seq. (1982) ("APA"), and section 113(d)(1) of the Mine Act. 1/ The judge denied Kaiser's application, however, on the

1/ Section 5(d) of the APA states: "The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty."

5 U.S.C. § 554(e) (1982).

Section 113(d)(1) of the Mine Act states:

An administrative law judge appointed by the Commission to hear matters under this [Act] shall hear, and make a determination upon, any proceeding instituted before the Commission and any motion in

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grounds that the circumstances surrounding the application rendered an award of declaratory relief inappropriate. 10 FMSHRC 578 (April 1988) (ALJ). For the reasons that follow, we hold that the judge erred in concluding that he had jurisdiction to consider and rule upon the application for declaratory relief.

Kaiser's application for declaratory relief arose in connection with a dispute between the Department of Labor's Mine Safety and Health Administration ("MSHA") and Kaiser regarding the application of 30 C.F.R. § 75.326, a mandatory underground coal mine safety standard, at Kaiser's Sunnyside No. 1, No. 2 and No. 3 mines ("Sunnyside" or "the mines") located in Carbon County, Utah. 2/ These underground coal mines

connection therewith, assigned to such administrative law judge by the chief administrative law judge of the Commission or by the Commission, and shall make a decision which constitutes his final disposition of the proceedings. The decision of the administrative law judge of the Commission shall become the final decision of the Commission 40 days after its issuance unless within such period the Commission has directed that such decision shall be reviewed by the Commission in accordance with paragraph (2). An administrative law judge shall not be assigned to prepare a recommended decision under this [Act].

30 U.S.C. § 823(d)(1).

2/ Section 75.326 essentially restates section 303(y)(1) of the Mine Act, 30 U.S.C. § 863(y)(1), and provides:

In any coal mine opened after March 30, 1970, the entries used as intake and return air courses shall be separated from belt haulage entries, and each operator of such mine shall limit the velocity of the air coursed through belt haulage entries to the amount necessary to provide an adequate supply of oxygen in such entries, and to insure that the air therein shall contain less than 1.0 volume per centum of methane, and such air shall not be used to ventilate active working places. Whenever an authorized representative of the Secretary finds, in the case of any coal mine opened on or prior to March 30, 1970, which has been developed with more

than two entries, that the conditions in the entries, other than belt haulage entries, are such as to permit adequately the coursing of intake or return air through such entries, (a) the belt haulage entries shall not be used to ventilate, unless such entries are necessary to ventilate, active working places, and (b) when the belt haulage entries are not necessary to ventilate the active working places, the operator of such mine shall

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were opened in 1896. Prior to 1960 they were developed with more than two entries. Kaiser asserts that in 1960, it began using a longwall system of development and determined that only two gateroad entries should be developed along the sides of each block of coal to be mined in order to achieve more stable rib, roof, and floor conditions at the mines. Under the two-entry longwall system, the belt haulage entry also serves as either the intake or return air entry. Consequently, the belt haulage entry is used to course intake or return air to and from the active workings.

Until September 1985, MSHA approved and Kaiser adopted roof control plans and ventilation system and methane and dust control plans ("ventilation plans") incorporating the two-entry longwall system of development. 3/ However, on September 11, 1985, MSHA advised Kaiser by letter that it no longer approved the ventilation plan for the Sunnyside mines. MSHA explained that it was "re-examining certain of its policies and practices regarding operators' use of belt haulage entries as ventilation entries, and particularly the application of section 75.326 to mines opened prior to March 30, 1970." MSHA further stated:

[I]n the context of section 75.326, [Sunnyside] has been developed with "more than two entries." Also, the conditions in these entries, other than belt haulage entries, are adequate to properly course the mine's intake and return air.... In addition, MSHA has determined that in all future mining areas sufficient entries can be developed such as to permit adequately the coursing of intake and return air through such entries without utilization of the belt entry.

K. Br. to ALJ, Attachment B at 2-3. MSHA's letter also stated that Kaiser could no longer use the two-entry longwall system to implement new development at Sunnyside unless the Secretary were to grant a petition filed by Kaiser pursuant to section 101(c) of the Mine Act seeking modification of section 75.326 as applied to Sunnyside. 4/

limit the velocity of the air coursed through the belt haulage entries to the amount necessary to provide an adequate supply of oxygen in such entries, and to insure that the air therein shall contain less than 1.0 volume per centum of methane.

3/ Pursuant to 30 C.F.R. § 75.200 and 30 C.F.R. § 75.316, an operator is required to adopt a roof control plan and a ventilation plan

suitable to the conditions and mining system of the mine. The plans must be reviewed and approved by the Secretary at least every six months.

4/ Section 101(c) of the Mine Act, 30 U.S.C. § 811(c), provides that the Secretary may modify the application of any mandatory safety standard to a mine. Modification may be granted in those instances where the Secretary determines either that an alternative means of achieving the results of the standard exists that will at all times guarantee no less than the same measure of protection afforded by the

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Thereafter, Kaiser filed with the Secretary a petition for modification of section 75.326, but continued to use the two-entry longwall system in developing the Sunnyside mines. On March 27, 1987, an MSHA inspector issued to Kaiser an order of withdrawal pursuant to section 104(d)(1) of the Act, 30 U.S.C. § 814(d)(1), alleging that Kaiser's use of the two-entry longwall system (without an approved modification of section 75.326) violated section 75.326. Kaiser contested the order and the case was assigned to Commission Administrative Law Judge Gary Melick. Kaiser Coal Corp., Docket No. WEST 87-116-R.

Prior to a hearing on the merits in Docket No. WEST 87-116-R, Kaiser and MSHA agreed to settle the case. MSHA consented to Kaiser's completion of its current two-entry longwall development section and agreed to vacate the section 104(d)(1) order of withdrawal, provided Kaiser complied with certain conditions during that development. Kaiser agreed to comply with MSHA's conditions and to withdraw its contest of the order. The settlement agreement by its terms applied only to the order of withdrawal at issue in that proceeding. On April 24, 1987, Kaiser moved the judge to withdraw its contest of the order and to dismiss the case, and on April 29, 1987, Judge Melick dismissed the contest proceeding.

In the meantime, MSHA, on behalf of the Secretary, was processing Kaiser's petition for modification. On October 27, 1987, the Administrator of MSHA granted the petition subject to certain conditions. Thereafter, the United Mine Workers of America ("UMWA") filed a request for a hearing before a Department of Labor administrative law judge. The judge scheduled a hearing for June 1988, but, upon the motion of the UMWA and without objection from Kaiser, the modification proceeding has been continued indefinitely.

On February 25, 1988, Kaiser initiated this proceeding by filing with the Commission an application for declaratory relief. The matter was assigned to Judge Melick. Following oral argument and briefs on the application, the judge denied Kaiser's request for declaratory relief.

In his decision, the judge concluded that Commission jurisdiction to grant declaratory relief existed under 5 U.S.C. § 554(e) and that

standard, or that application of the standard will result in a diminution of safety to the miners in the mine. The operator is required to petition the Secretary for relief from the application of

the standard. The Secretary has adopted regulations governing the processing of such petitions. 30 C.F.R. Part 44. Upon receipt of a petition, MSHA gives notice, conducts an investigation and issues a proposed decision granting or denying the relief sought. This proposed decision is made by an Administrator of MSHA, which becomes the final decision of the Secretary unless a request for a hearing is filed. If requested, a hearing is held before an administrative law judge of the Department of Labor. An appeal may be made to the Assistant Secretary of Labor. Only a decision of the Assistant Secretary is deemed final agency action for purposes of judicial review.

specific authority for these proceedings to be heard before a Commission Administrative Law Judge is granted under section 113(d)(1) of the Mine Act. 10 FMSHRC at 579. The judge noted, however, that 5 U.S.C. § 554(e) empowers an agency to "issue a declaratory order to terminate a controversy or remove uncertainty," and reasoned that a declaratory order should be denied when it will not accomplish these goals. 10 FMSHRC at 580. The judge concluded that even if he were to hold section 75.326 inapplicable to Sunnyside, the controversy at issue would not be terminated because Kaiser would still find it necessary to obtain the Secretary's approval in its roof control and ventilation plans for two entry longwall mining development. Therefore, the judge found declaratory relief was inappropriate, and he denied the application. 10 FMSHRC at 580-82.

We granted Kaiser's petition for discretionary review. We also directed for review, *sua sponte*, the question of whether the judge had jurisdiction to rule upon Kaiser's application. Because we conclude that the judge did not have jurisdiction to hear and decide Kaiser's application, we do not reach the question of whether declaratory relief would have been appropriate.

We begin with the fundamental principle that, as an administrative agency created by statute, we cannot exceed the jurisdictional authority granted to us by Congress. See, e.g., *Civil Aeronautics Board v. Delta Airlines*, 367 U.S. 316, 322 (1961); *Lehigh & New England R.R. v. ICC*, 540 F.2d 71, 78 (3rd Cir. 1976); *National Petroleum Refiners Assoc. v. FTC*, 482 F.2d 672, 674 (D.C. Cir. 1973). The Commission is an independent adjudicative agency created by section 113 of the Mine Act, 30 U.S.C. § 823, to provide trial-type proceedings and administrative appellate review in cases arising under the Act. Several provisions of the Mine Act grant subject matter jurisdiction to the Commission by establishing specific enforcement and contest proceedings and other forms of action over which the Commission judicially presides: e.g., section 105(d), 30 U.S.C. § 815(d), provides for the contest of citations or orders, or the contest of civil penalties proposed for such violations; section 105(b)(2), 30 U.S.C. § 815(b)(2), provides for applications for temporary relief from orders issued pursuant to section 104; section 107(e), 30 U.S.C. § 817(e), provides for contests of imminent danger orders of withdrawal; section 105(c), 30 U.S.C. § 815(c), provides for complaints of discrimination; and section 111, 30 U.S.C. § 821, provides for complaints for compensation. Specific provisions, such as these, delineate the scope of the Commission's jurisdiction.

In contrast to the Act's provisions conferring jurisdiction, section 113(d)(1) is procedural in nature. It creates no specific right of action or proceeding over which the Commission may preside. Section 113 establishes the Commission and sets forth the procedures for hearing, deciding, and reviewing matters arising under the Act. Although section 113(d)(1) states that Commission administrative law judges "appointed ... to hear matters under this Act shall hear, and make a determination upon, any proceeding instituted before the Commission," this language describes the scope of the judge's authority to hear and decide matters in those proceedings otherwise properly filed

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pursuant to the Act. In short, section 113(d)(!) does not constitute an independent grant of subject matter jurisdiction. 5/

Kaiser's argument that the language of section 113(d)(1) contains a broad grant of jurisdiction giving Commission judges the authority to decide "any proceeding" is rejected. This language must be read in the proper statutory context discussed above, and is not an invitation from Congress to legislate for ourselves virtually unlimited jurisdiction over "any proceeding." Indeed, the Commission has consistently refrained from inferring jurisdiction in the face of Congress' failure to provide it. In refusing to hold that miners or their representatives have authority under the Act to initiate review of citations through a notice of contest where the Act does not specifically provide that right, the Commission stated: "The statute contains no express provision for the asserted right.... It is not the prerogative of this Commission to confer [a] right in the absence of statutory provision." *United Mine Workers of America v. Secretary of Labor*, 5 FMSHRC 807, 815 (May 1983), *aff'd mem.*, 725 F.2d 126 (D.C. Cir. 1983)(table). See also, *United Mine Workers of America v. Secretary of Labor*, 5 FMSHRC 1519, 1521 (September 1983) (rejecting contention that section 105(d) of the Mine Act, 30 U.S.C. § 815(d), grants miners the right to contest Secretary's vacation of order issued pursuant to section 104 of the Act, 30 U.S.C. § 814). This reasoning is equally applicable here.

Reliance upon 5 U.S.C. § 554(e) is also misplaced in the context of this proceeding. The APA is not a jurisdictional statute and "does not afford an implied grant of subject matter jurisdiction...." *Califano v. Sanders*, 430 U.S. 99, 107 (1977). See also *American Air Parcel Forwarding Co. v. United States*, 718 F.2d 1546, 1552 (Fed. Cir. 1983), *cert. den.*, 466 U.S. 937 (1984). Rather, agencies must look to their ensuing statutes for the boundaries of their jurisdiction. Thus, while section 554(e) provides that an agency may issue a declaratory order to terminate a controversy or remove uncertainty, this authority is available only where jurisdiction is already conferred upon the agency by its statute. Cf. *Illinois Terminal R.R. v. ICC*, 671 F.2d 1214, 1216 (8th Cir. 1982).

The Commission has previously recognized that it may grant declaratory relief in appropriate proceedings where jurisdiction

5/ The procedural nature of section 113(d)(1) is emphasized in the legislative history. The provision is described in the Senate committee report on the bill that largely became the Mine Act in a section of the report entitled "Procedures." The joint explanatory

statement of the committee of conference summarized this section as requiring that "Administrative Law Judges hear and decide any matter assigned and make a decision which would constitute a final disposition of the proceeding." Nothing in the legislative history indicates that Congress viewed section 113(d)(1) as jurisdictional. S. Rep. No. 181, 95th Cong., 1st Sess. 78 (1977) and S. Rep. No. 461, 95th Cong., 1st Sess. 60 (1977), reprinted in Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong. 2nd Sess., Legislative History of the Federal Mine Safety and Health Act of 1977. at 636 and 1338 (1978).

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otherwise exists. *Climax Molybdenum Co.*, 2 FMSHRC 2748, 2751-52 (October 1980), *aff'd sub nom. Climax Molybdenum Co. v. Secretary of Labor*, 703 F.2d 447, 452 (10th Cir. 1983); *Youghiogheny & Ohio Coal Co.*, 7 FMSHRC 200, 203 (February 1985)("Y&O"). Both *Climax* and *Y&O* were enforcement proceedings properly brought before the Commission pursuant to section 105(d) of the Act and therefore within Commission jurisdiction. Further, authority to grant declaratory relief in a section 105(d) enforcement proceeding is implicit in section 105(d), which authorizes the Commission to affirm, modify, or vacate the contested citation, order, or proposed penalty or direct "other appropriate relief." See *Climax*, 2 FMSHRC at 2751 n.5. 6/

Here, Kaiser chose to settle and to withdraw the prior section 105(d) contest proceeding in which the applicability of 75.326 at Sunnyside was at issue. Afterward, absent any extant enforcement action by the Secretary, Kaiser filed the present independent application for declaratory relief. Although the Commission had unquestioned jurisdiction over the prior contest proceeding, it is without jurisdiction over this application for declaratory relief.

6/ Section 105(d) states in part:

If ... an operator of a ... mine notifies the Secretary that he intends to contest the issuance or modification of an order issued under section [104] of this [Act], or citation or notification of proposed assessment of a penalty ..., the Secretary shall immediately advise the Commission of such notification, and the Commission shall afford an opportunity for a hearing (in accordance with [5 U.S.C. § 554] ...), and thereafter shall issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's citation, order, or proposed penalty, or directing other appropriate relief. ...

30 U.S.C. § 815(d)(emphasis added).

In affirming the Commission in *Climax*, the Tenth Circuit also emphasized that declaratory relief is part of the "other appropriate relief" the Commission may afford when a case properly arises under section 105(d) of the Act. *Climax*, *supra*, 703 F.2d at 452 n.4.

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Accordingly, the judge's decision is reversed to the extent he concluded that he had jurisdiction to hear and decide Kaiser's application for declaratory relief. The judge's denial of the application for declaratory relief is affirmed on the ground that the Commission lacks jurisdiction in this proceeding.

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