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UNION 2333 (UMWA) V. RANGER FUEL
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
March 8, 1990

LOCAL UNION 2333. DISTRICT 29,
UNITED MINE WORKERS OF AMERICA
(UMWA)

v. Docket No. WEVA 86-439-C
RANGER FUEL CORPORATION

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

DECISION

BY THE COMMISSION:

This compensation proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. $ 801 et seq. (1982) ("Mine Act" or "Act"), is before the Commission for the second time. The United Mine Workers of America ("UMWA") seeks compensation from Ranger Fuel Corporation ("Ranger") under the third sentence of section 111 for an idlement of miners following the issuance of an imminent danger withdrawal order pursuant to section 107(a) of the Act. 1/ Previously,

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1/ Section 111 of the Mine Act provides in relevant part as follows:

> [1] If a coal or other mine or area of such mine is closed by an order issued under section [103] ..., section [104] ..., or section [107] of this [Act], all miners working during the shift when such order was issued who are idled by such order shall be entitled, regardless of the result of any review of such order, to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than the balance of such shift. [2] If such order is not terminated prior to the next working

shift, all miners on that shift who

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on interlocutory review, we held that Ranger's payment of a civil penalty for a citation issued subsequent to the issuance of the imminent danger withdrawal order precluded Ranger from contesting in this

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> are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of such shift. [3] If a coal or other mine or area of such mine is closed by an order issued under section [104] ... or section [107] of this [Act] for a failure of the operator to comply with any mandatory health or safety standards, all miners who are idled due to such order shall be fully compensated after all interested parties are given an opportunity for a public hearing, which shall be expedited in such cases, and after such order is final, by the operator for lost time at their regular rates of pay for such time as the miners are idled by such closing, or for one week, whichever is the lesser. [4] Whenever an operator violates or fails or refuses to comply with any order issued under section [103] ..., section [104] ..., or section [107] of this [Act], all miners employed at the affected mine who would have been withdrawn from, or prevented from entering, such mine or area thereof as a result of such order shall be entitled to full compensation by the operator at their regular rates of pay, in addition to pay received for work performed after such order was issued, for the period beginning when such order was issued and ending when such order is complied with, vacated, or terminated. ...

30 U.S.C. $ 821 (sentence numbers added).

Section 107(a) of the Act provides in pertinent part:

> If, upon any inspection or investigation of a coal or other mine which is subject to this chapter, an authorized representative of the Secretary finds that an imminent danger exists, such representative shall determine the extent of the area of such mine throughout which the danger exists, and issue an order requiring the operator of such mine to cause all persons, except those referred to in section [104(c)] of this title, to be withdrawn from, and

> to be prohibited from entering, such area until an authorized representative of the Secretary determines that such imminent danger and the conditions or practices which caused such imminent danger no longer exist. ...

30 U.S.C. $ 817(a).

compensation proceeding the violation that was alleged in the citation. We further held, however, that Ranger could challenge in this proceeding the causal relationship between the alleged violation and the issuance of the imminent danger withdrawal order. We therefore remanded this matter for further proceedings. Loc. U. 2333, UMWA v. Ranger Fuel Corp., 10 FMSHRC 612 (May 1988) ("Ranger Fuel 1"). On remand, Commission Administrative Law Judge Gary Melick held that the imminent danger withdrawal order had not been timely contested by Ranger and had become final for purposes of section 111. Finding that there was a causal nexus between the withdrawal order and the violation alleged in the citation, the judge awarded the complainants compensation and prejudgment interest. 10 FMSHRC 1474 (October 1988)(ALJ). We granted Ranger's petition for discretionary review.

The principal issues presented on review are: whether an operator may challenge in a compensation proceeding the validity of an imminent danger withdrawal order despite the operator's failure to contest the order pursuant to section 107(e)(1) of the Mine Act (n. 3 infra); whether there was a causal "nexus" between the withdrawal order and the violation alleged in the subsequently issued citation; and whether prejudgment interest may be awarded in a compensation proceeding. For the reasons that follow, we affirm the judge's award of compensation and interest but direct that interest be calculated according to the formula set forth by the Commission in Secretary on behalf of Bailey v. Arkansas-Carbona Co., 5 FMSHRC 2642 (December 1983), and, as applicable, Loc. U. 2274, UMWA v. Clinchfield Coal Co.. 10 FMSHRC 1493 (November 1988) ("Clinchfield II"), aff'd sub nom. Clinchfield Coal Co. v. FMSHRC, No. 88-1873 (D.C. Cir. February 9, 1990). See also 54 Fed. Reg. 2226 (January 19, 1989).

I.

On May 29, 1986, William Uhl, an inspector of the Department of Labor's Mine Safety and Health Administration ("MSHA"), conducted an inspection of Ranger's Beckley No. 2 underground coal mine located in Beckley, West Virginia. Inspector Uhl entered the mine at approximately 8:30 a.m. and proceeded to the 7 East section. While inspecting the longwall in that section, Uhl heard what he termed a "large fall" in the gob. Tr. 100-01. At about 10:00 a.m., Uhl arrived at a location in the Number 3 Entry on the tail side of the longwall immediately adjacent to the roof fall. Using a hand-held methane detector, he found the level of methane gas to be in excess of five percent. (Methane becomes explosive at a five percent concentration. Ranger Fuel I, supra, 10 FMSHRC at 614, citing Monterey Coal Co., 7 FMSHRC 996, 1000-01 (July 1985).) Uhl testified that the concentration of methane was too "heavy" for him to attempt further readings inby. However, he took additional readings outby, where

the methane content was approximately one percent lower.

Uhl believed that the immediate cause of the methane concentration was a sudden inundation resulting from the roof fall that he had heard and he also believed that the mine's ventilation bleeder system was not working properly to dissipate the methane, due to a water blockage in a passageway. Tr. 99, 102.04, 106.12, 115, 118, 125, 148. At 11:30 a.m.,

Uhl issued imminent danger withdrawal order No. 2577281 to Ranger pursuant to section 107(a) of the Mine Act (n. 1 supra). The order states in part:

> An explosive mixture of methane gas in excess of five (5) per[c]ent was present in the seven east ... 0-13-0 section in the number three ... entry side of the longwall ... extending inby the face when tested with an approved E.70 methane detector (calibrated 05-22-86). ...

As a result, Ranger withdrew all miners then underground.

Later that same day, Kenneth Perdue, Ranger's senior safety supervisor, went to the 7-East section with two other foremen and took methane readings between 2:00 and 4:00 p.m. Perdue testified that there was not an explosive mixture present in the locations that he sampled and that none of his methane readings exceeded two to three percent. Perdue acknowledged, however, that excessive levels of methane were found when a gob probe was extended into the gob area. The highest methane reading obtained by Perdue using the gob probe was four percent. Perdue also testified that his inspection of the bleeder system showed sufficient ventilation and that the bleeder system was doing what it was supposed to do. In Perdue's opinion, Inspector Uhl's five percent methane reading was caused by the roof fall and because the bleeder system had not had enough time to dissipate the methane.

Between 6:00 and 8:00 p.m. Inspector Uhl's Supervisor, Jules Gautier, arrived at the mine with a group of MSHA inspectors and proceeded underground to evaluate the bleeder system and determine what area was affected. Gautier testified that, at that time, further methane samples indicated that there was still an explosive mixture of methane present and, due to the water accumulation resulting in a blockage, he could not effectively evaluate the bleeder system.

The next day, May 30, 1986, MSHA personnel met with Ranger officials but did not go underground to inspect the mine. Ranger requested that the withdrawal order be modified to allow the miners in other sections to return to work. The request was denied because, according to Gautier, the methane samples taken the previous evening showed an explosive mixture of methane in the tail entries and, due to the problems with the water accumulation, it was not known to what extent methane was present. On May 31, 1986, after another visit by MSHA inspectors, MSHA modified the withdrawal order, permitting the west and north end of the mine to resume operation because the methane was no longer in the explosive range in the tail entry. The order remained in effect for the 7 East and 8 East

sections, however, because the inspectors still could not reach the bleeder area.

On June 3, 1986, Gautier received an oral report concerning the results of methane bottle samples that had been collected on May 29 and 31, 1986. In Gautier's view, the report showed that two days after the initial outburst of methane, the cited section still had methane in the three to four percent range. Tr. 32. As a result of this report and a

bottle sample taken by Uhl on May 29 indicating 5.56 percent methane, Gautier instructed Uhl to issue Ranger a citation, pursuant to section 104(a) of the Mine Act, 30 U.S.C. $ 814(a), alleging an inadequate bleeder system in violation of 30 C.F.R. $ 75.329. 2/ The citation, issued on June 3, states:

> Based on laboratory analysis of an air sample collected on 05/29/86 ... the bleeder system failed to function adequately to carry away an explosive mixture of methane in the tail entries of the 7 East longwall section (013-0) ... extending inby for at least 500 feet. Analysis indicated the methane content to be in an explosive mixture of 5.56% CH4 with 19.75% oxygen present. The citation was a factor that contributed to the issuance of imminent danger order No. 2577281 date 05-29.86, (therefore no abatement time is set.)

(Emphasis added.) Gautier included the underlined sentence in the citation because he believed that the bleeder system was not working effectively and that there was not enough air in the affected area to dilute the methane and render it harmless. Gautier testified that usually a bleeder system takes care of the methane "pretty quick" but that in this instance it took more than two days to get the methane out of the tail entries.

On June 4, 1986, MSHA terminated the section 107(a) withdrawal order and the section 104(a) citation following a determination that the methane level in the mine was below the maximum permissible level as a

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2/ Section 75.329, which restates section 303(z)(2) of the Mine Act, 30 U.S.C. $ 863(z)(2), provides in pertinent part:

> On or before December 30, 1970, all areas from which pillars have been wholly or partially extracted and abandoned areas ... shall be ventilated by bleeder entries or by bleeder systems or equivalent means, or be sealed.... When ventilation of such areas is required, such ventilation shall be maintained so as continuously to dilute, render harmless, and carry away methane and other explosive gases within such areas and to protect the active workings of the mine from the hazards of such methane and other explosive gases. Air coursed through underground areas from which pillars have been wholly or partially extracted which enters another split of air shall not contain more than 2.0 volume per centum of methane, when

tested at the point it enters such other split. When sealing is required, such seals shall be made in an approved manner so as to isolate with explosion-proof bulkheads such areas from the active workings of the mine.

result of Ranger's installation of additional ventilation controls.

Ranger did not contest either the section 104(a) citation pursuant to sections 105(a) or (d) of the Mine Act or the section 107(a) withdrawal order pursuant to section 107(e)(1) of the Act. 3/ After receiving MSHA's notice of a proposed civil penalty assessment of $213 for the violation alleged in the citation, Ranger paid the penalty on August 29, 1986, without requesting a hearing.

As relevant here, the mine had been idled by the withdrawal order from 11:30 a.m., May 29, to 7:00 p.m., May 31, 1986, when the order was modified to permit resumption of production in certain areas of the mine. The miners working the 8:00 a.m. to 4:00 p.m. shift on May 29 were compensated by Ranger for the remainder of that shift and those scheduled to work the following shift, 4:00 p.m. to midnight, were also paid by Ranger for that shift. On August 15, 1986, the United Mine Workers of America ("UMWA"), the representative of the miners at the Beckley No. 2 Mine, filed with the Commission a compensation complaint seeking "one-week compensation" under the third sentence of section 111 of the Act (n. 1. supra) on behalf of those miners who had been scheduled to work on May 30 and 31, but were idled by the withdrawal order. (Under the third sentence of section 111, miners idled as a result of a section 104 or 107 withdrawal order issued "for a failure of

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3/ Section 105 of the Act, 30 U.S.C. $ 815, provides operators with two opportunities to contest and request a hearing concerning issuance of a section 104 citation: section 105(d), 30 U.S.C. $ 815(d), permits immediate review of a citation and section 105(a), 30 U.S.C. $ 815(a), affords an opportunity to contest the penalty (and the underlying allegation of violation) after the Secretary has proposed a civil penalty for the alleged violation. See. e.g., Ranger Fuel I, 10 FMSHRC at 617-19.

Section 107(e)(1) provides operators an opportunity to contest the issuance of an imminent danger order:

> Any operator notified of an [imminent danger] order under this section or any representative of miners notified of the issuance, modification, or termination of such an order may apply to the Commission within 30 days of such notification for reinstatement, modification or vacation of such order. The Commission shall forthwith afford an opportunity for a hearing (in accordance with section 554 of title 5 but without regard to subsection (a)(3) of such section) and thereafter shall issue an order,

based upon findings of fact, vacating, affirming, modifying, or terminating the Secretary's order. The Commission and the courts may not grant temporary relief from the issuance of any order under subsection (a) of this section.

30 U.S.C. $ 817(e)(1).

the operator to comply with any mandatory health or safety standards" are entitled to compensation "for such time" as they are idled or "for one week, whichever is the lesser.") Ranger's payment of the civil penalty for the violation alleged in the citation, referenced above, occurred some 10 days after Ranger had been served with a copy of the UMWA's complaint for compensation under section 111.

Prior to hearing on the compensation complaint, both the UMWA and Ranger filed motions for summary decision. The administrative law judge denied both motions. We thereafter granted the UMWA's petition for interlocutory review and reversed the judge's order insofar as he had held that Ranger could contest in this compensation proceeding both the fact of violation and the validity of the citation for which Ranger had already paid the proposed civil penalty. 10 FMSHRC at 617-20. We affirmed, however, the judge's order to the extent that he permitted Ranger to litigate the issue of causal nexus between the violation alleged in the citation and the issuance of the section 107(a) withdrawal order. 10 FMSHRC at 620.21. We remanded for further proceedings.

Following a hearing on remand, Judge Melick concluded that the section 107(a) imminent danger withdrawal order was "final" for purposes of section 111 because of Ranger's failure to contest that order within the time set forth in section 107(e)(1) of the Act (n. 3 supra). 10 FMSHRC at 1475-77. He concluded that the validity of the order and the underlying issue of whether the order was, in fact, issued for an imminent danger could not be contested in this compensation proceeding. Id. In reaching this conclusion, he stated that our decision in Ranger Fuel I "would appear to preclude litigation of the underlying order," finding the issue presented to be analogous to the operator's related failure to contest the citation or penalty proposal. 10 FMSHRC at 1476. 77. He noted in particular that permitting Ranger to challenge the imminent danger order in the compensation proceeding would anomalously place the UMWA in the role of the Secretary of Labor in establishing the validity of the order. 10 FMSHRC at 1477. Accordingly, citing Old Ben Coal Co., 7 FMSHRC 205 (February 1985), he determined that the "assertion of 'imminent danger' ... in the order must ... be regarded as true." Id.

The judge also concluded that a causal nexus existed between the imminent danger order and the violation alleged in the citation, holding that an inadequate bleeder system was a causal factor in the existence of the explosive mixture of methane found by Inspector Uhl. 10 FMSHRC at 1476-78. He indicated that the allegations of violation and imminent danger in the citation and withdrawal order respectively "must be accepted as true" in light of Ranger's failure to contest those allegations. 10 FMSHRC at 1477. He disregarded any evidence conflicting with the

relevant factual allegations in the citation and the order. Id. He then found that the testimony of Inspector Uhl, summarized above, concerning the effects of the malfunctioning bleeder system in creating the imminent danger, was more credible than the contrary testimony of Ranger's safety supervisor Perdue, also noted above. 10 FMSHRC at 1478. Accordingly, the judge concluded that "the cited violative condition[,] i.e., an inadequate bleeder system, was a

causal factor for the existence of the explosive mixture of methane found ... in the withdrawal order [and] the requisite causal nexus has been established." Id. Based on these conclusions and the parties' stipulations, the judge awarded compensation to the miners in question. He also awarded prejudgment interest on the compensation award, calculated in accordance with the formula set forth in Arkansas-Carbona, supra. 10 FMSHRC at 1479.

On review, Ranger submits that the judge erroneously refused to consider evidence that the withdrawal order upon which the UMWA's compensation claim is based was, in fact, invalid. Ranger submits that it had the right to challenge the validity of the imminent danger order in this compensation proceeding because that issue had never been actually litigated. Ranger further contends that the judge erred in finding a causal nexus between the imminent danger and the underlying violation. It notes that the withdrawal order itself was not issued for a violation of a mandatory standard, the citation being issued several days after the order. Additionally, Ranger argues that the violative conditions cited in the citation did not cause any "imminent danger" and that, thus, the judge's finding of causal nexus is not supported by substantial evidence. Finally, Ranger submits that the judge erroneously added prejudgment interest to the award of compensation inasmuch as section 111 does not specifically provide for interest on compensation awards.

II.

We turn first to the question of whether Ranger may challenge the validity of the section 107(a) imminent danger order in this compensation proceeding notwithstanding its failure to contest the order under section 107(e)(1) of the Act.

As we discussed in Ranger Fuel I, section 105 establishes a comprehensive scheme for contest and review of citations and orders issued pursuant to section 104 of the Act. 10 FMSHRC at 617.19. Accord, Loc. U. 1810, UMWA v. Nacco Mining Co., 11 FMSHRC 1231, 1238-39 (July 1989). We held that an operator's failure to contest under section 105 (n. 3 supra) an allegation of violation in a citation precludes it from challenging the fact of violation in the compensation proceeding. Ranger Fuel I, 10 FMSHRC at 618-19. We also concluded that an operator's payment of the proposed civil penalty generated the same preclusive effect for compensation purposes. Id. See also Loc. U. 1889, UMWA v. Westmoreland Coal Co., 8 FMSHRC 1317, 1330 (September 1986); Loc. U. 2274, UMWA v. Clinchfield Coal Co., 8 FMSHRC 1310, 1314 (September 1986) ("Clinchfield I"); Old Ben, supra, 7 FMSHRC at 207-09. Relying on Ranger Fuel I, we have subsequently held that an operator's failure to contest a

section 104 withdrawal order and its later modifications (and the operator's payment of the civil penalty proposed in conjunction with the order) foreclosed it from attacking the validity of the order and its modifications in the compensation litigation. Nacco, supra, 11 FMSHRC at 1238-39.

Underlying these decisions is the recognition that the "compensation provisions of section 111 ... stand apart from the

interrelated structure for reviewing citations, orders and penalties created by section 105." Nacco, 11 FMSHRC at 1239. As we stated in Nacco:

> The distinct purpose of section 111 is to determine the compensation due miners idled by certain withdrawal orders, not to provide operators with an additional avenue for review of the validity of the Secretary's enforcement actions. That section 111 does not provide the basis for collaterally attacking the validity of an order that underlies a compensation claim is plainly revealed by the language of section 111, which, in its first two sentences, affords compensation "regardless of the result of any review" of an order and in its third sentence affords compensation "after such order is final." Thus, the Act contemplates that, for compensation purposes, the validity of the enforcement action upon which a compensation claim is based is either irrelevant or has already been otherwise established.

Id. We also emphasized that in section 105 contest proceedings the Secretary of Labor is a party, whereas in compensation proceedings only the miners and their representative and the operator are parties, and that requiring miners and their representative to establish the fact of violation or the validity of the Secretary's enforcement action in the compensation case would improperly thrust them into the Secretary's prosecutorial role. Ranger Fuel I, 10 FMSHRC at 619; Nacco, 11 FMSHRC at 1249-40. Accord, Int'l U., UMWA v. FMSHRC, 840 F.2d 77, 81-82 (D.C. Cir. 1988).

These same considerations support a consistent result here. Section 107 is an integral component of the Secretary's enforcement arsenal under the Act. Section 107(e)(1) specifically provides for adjudicative review of section 107(a) imminent danger orders, and expressly affords operators the opportunity to contest and request a hearing on the validity of such orders within 30 days of notification thereof. The contest and review provisions of section 107 are parallel to the section 105 scheme for contest and review of section 104 citations and orders and related penalty proposals. Thus, as with the relationship between section 111 and 105, we similarly conclude that section 111 "stands apart" from the structure for reviewing imminent danger orders created by section 107. See Nacco, 11 FMSHRC at 1239.

There is no indication in the text or legislative history of section 111 that the compensation provisions of the Mine Act were intended to

provide operators with an additional avenue of review of, or a platform for collateral attack on, the validity of the Secretary's enforcement actions under section 107. Such an attack in a compensation case, as with a similar challenge to a section 104 citation or order, likewise would force miners and their representative to assume the Secretary's prosecutorial role of establishing the validity of her enforcement actions. Thus, we conclude that permitting challenges to

uncontested section 107 orders in section 111 compensation proceedings would create the same kind of statutory contradictions as would be created by allowing challenges of uncontested section 104 citations and orders under section 111. Ranger Fuel I, supra, Nacco, supra.

Ranger, however, points to the language in section 105(a) of the Act providing that an uncontested proposed penalty becomes "a final order of the Commission ... not subject to review by any court or agency" (see, e.g., Old Ben, 7 FMSHRC at 209), and argues that the absence of similar language in section 107 must mean that Congress did not intend a failure to contest an imminent danger order under section 107(e)(1) to carry the same preclusive effect.

We have observed in another section 111 case that the legal maxim expressio unius est exclusio alterius (the express direction for something in one provision, and its absence in a related provision, implies an intent to deny it in the latter setting), relied on by Ranger here, while "often ... useful ... in determining statutory meaning, ... is nevertheless only an aid to construction and not an invariable rule of law." Clinchfield II, supra. 10 FMSHRC at 1502, aff'd, Clinchfield Coal Co. v. FMSHRC, supra, slip op. at 11-12. In affirming our Clinchfield II decision on this point, the D.C. Circuit observed:

> The difficulty with this doctrine .- and the reason it is not consistently applied ... -- is that it disregards several other plausible explanations for an omission. The drafter (here Congress) may simply not have been focusing on the point in the second context; and, where an agency is empowered to administer the statute, Congress may have meant that in the second context the choice should be up to the agency. Indeed, under [Chevron U.S.A., Inc. v. NRDC, 467 U.S. 837, 842-44 (1984)], where a court cannot find that Congress clearly resolved an issue, it presumes an intention to allow the agency any reasonable interpretative choice.

Clinchfield Coal Co. v. FMSHRC, slip op. at 11-12.

The legislative history makes it abundantly clear that the reason for inclusion of the "final order" language in section 105(a) was Congress' deep concern over what it viewed as failures in the civil penalty system under the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. $ 801 et seq. (1976)(amended 1977)("1969 Coal Act"). See, e.g., S. Rep. No. 181, 95th Cong., 1st Sess. 40-46 (1977)("S. Rep."), reprinted in Senate

Subcommittee on Labor, Committee on Human Resources, 95th Cong., 2d Sess., Legislative History of the Federal Mine Safety and Health Act of 1977, at 628.34 (1978) ("Legis. Hist."). See also Coal Employment Project v. Dole, 889 F.2d 1127, 1132 (D.C. Cir. 1989), and authorities cited. The Senate Committee largely responsible for drafting the bill that was enacted as the Mine Act criticized the "lengthy, and often repetitive" procedures of penalty assessment and collection under the 1969 Coal Act and the delays occasioned thereby and, as one of "a number of means by which the method of collecting

penalties is streamlined," provided in that bill that an uncontested penalty would become a final Commission order. S. Rep. 44-45, reprinted in Legis. Hist. 632-33. No similar legislative concern is evidenced in the legislative history with respect to contest of imminent danger orders. Given the distinct substantive purposes of the civil penalty and imminent danger schemes in the Act, we can understand why a similar "final order" provision would not be deemed necessary for section 107(e)(1). What we find most decisive, however, is that the Act plainly reflects that the only way to challenge an imminent danger order is pursuant to section 107(e)(1). The presence of the final order proviso in section 105(a) does not, by itself, convince us that Congress considered and rejected a similar remedy for section 107(e)(1). See Clinchfield Coal Co. v. FMSHRC, slip op. at 12.

In support of its position, Ranger further contends that the failure of the imminent danger order at issue to allege a violation on its face is fatal to the UMWA's compensation claim. We rejected the identical argument in Clinchfield I & II (8 FMSHRC at 1314; 11 FMSHRC at 1496-98), and the D.C. Circuit has affirmed our holding. Clinchfield Coal Co. v. FMSHRC, slip op. at 4.9.

Finally, Ranger also relies upon the disparity in the time period allowed for an operator to contest an imminent danger order under section 107(e)(1) (30 days) and the time provided under Commission Procedural Rule 35 (29 C.F.R. $ 2700.35) for claimants to file compensation complaints under section 111 (90 days). Ranger asserts that this divergence inefficiently and unfairly breeds litigation because operators will often be forced to contest an order that could potentially trigger a compensation claim, without notice of whether they actually face such a claim -- particularly in the case of an imminent danger order that itself does not cite a violation. We acknowledge that practical complications can arise in this regard. Cf. Clinchfield Coal Co. v. FMSHRC, slip op. at 6-7. However, we rejected similar arguments in Nacco with respect to an operator's failure to contest section 104 orders in a context of identically disparate contest periods (11 FMSHRC at 1240), and the Clinchfield court concluded that the "awkwardness" of having to contest an imminent danger order not citing a violation did not outweigh the sound reasons for allowing the Secretary, as here, to allege the underlying violation in a subsequent enforcement action. Slip op. at 7.

Thus, we hold that an uncontested section 107(a) imminent danger order is final and valid on its face for purposes of section 111 compensation proceedings and, accordingly, an operator is precluded in a compensation proceeding from contesting the validity of such an uncontested order.

Ranger also contends that the judge's finding of a causal nexus

between the imminent danger order and the bleeder violation alleged in the relevant citation is improper and not supported by substantial evidence. As previously discussed, Ranger's failure to contest the citation and its payment of the civil penalty proposed for the citation result in the allegation of violation being treated as true for purposes of this compensation proceeding. Ranger Fuel I, 10 FMSHRC at 617.20.

As noted, the judge reviewed and specifically accepted as more credible the testimony of Inspector Uhl that the bleeder system was not functioning properly on May 29, 1986, and that the system's failure to dissipate the sudden inundation of methane was a contributing factor to the imminent danger that existed. 10 FMSHRC at 1476.78. We have often emphasized that a judge's credibility determinations may not be overturned lightly. E.g., Quinland Coals, 9 FMSHRC 1614, 1618 (September 1987). The relevant testimony of record has been summarized above and affords substantial support to the judge's finding that the inadequately functioning bleeder system contributed to the existence of the imminent danger, i.e., the excessive amount of methane in the mine. Therefore, we conclude that substantial evidence supports the judge's finding of a causal nexus between the imminent danger order and the violation set forth in the citation.

Lastly, Ranger contests the judge's award of prejudgment interest on the compensation found due. In Clinchfield II, we approved the award of prejudgment interest on compensation, in appropriate cases, and adopted the short-term Federal rate applicable to the underpayment of taxes as the appropriate rate for both compensation and discrimination proceedings under the Act. 10 FMSHRC at 1499-1506. See also 54 Fed. Reg. 2226, supra. The D.C. Circuit has affirmed our determinations in this regard (Clinchfield Coal Co. v. FMSHRC, slip op. at 9-13), and Ranger's various objections to the Commission's award of prejudgment interest are accordingly rejected. We modify the judge's award of interest, however, by directing that interest be computed as provided in Arkansas-Carbona, supra, and, as applicable, Clinchfield II and 54 Fed. Reg. 2226.

III.

For the foregoing reasons, the judge's decision is affirmed but his decision regarding the computation of interest is modified.

Distribution

Mary Lu Jordan, Esq.
Joyce Hanula
United Mine Workers of America
900 15th St., N.W.
Washington, D.C. 20005

John T. Scott, Esq.
Crowell & Moring
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Dennis D. Clark, Esq.
Office of the Solicitor
U.S. Department of Labor
4015 Wilson Blvd.
Arlington, VA 22203

Administrative Law Judge Gary Melick
Federal Mine Safety & Health Review Commission
5203 Leesburg Pike, Suite 1000
Falls Church, Virginia 22041