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SOL (MSHA) V. DONALD GUESS
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December 13, 1993

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	:	
v.	:	Docket No. KENT 91-1340
DONALD GUESS, employed by PYRO MINING COMPANY	:	
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	:	
v.	:	Docket No. KENT 92-73
PAUL SHIREL, employed by PYRO MINING COMPANY	:	

BEFORE: Holen, Chairman; Backley, Doyle, and Nelson, Commissioners

DECISION

BY THE COMMISSION:

In these civil penalty proceedings arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1988)(the "Mine Act" or "Act"), the issue is whether employees of a partnership comprised of corporate partners may be subject to individual liability under section 110(c) of the Mine Act, 30 U.S.C. 820(c).(Footnote 1) The Secretary of Labor proposed the

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1 Section 110(c) provides, in part:

> Whenever a corporate operator violates a mandatory health or safety standard ..., any director, officer,or agent of such corporation who knowingly authorized, ordered, or carried out such violation, ... shall be subject to the same civil penalties, fines, and

(continued...)

assessment of civil penalties against Donald Guess and Paul Shirel for their alleged conduct in knowingly authorizing, ordering, or carrying out violations of mandatory safety standards by their employer, Pyro Mining Company ("Pyro"). Administrative Law Judge Gary Melick dismissed the proceedings against Guess and Shirel on the grounds that section 110(c) applies only to agents of corporations and that Pyro was a partnership at the time of the violations. 14 FMSHRC 1826 (November 1992)(ALJ). For the following reasons, we affirm the judge's decision.

I.
Factual and Procedural Background

Pyro was a general partnership comprised of two corporations, which operated the William Station Mine, where Guess and Shirel were employed as the mine's maintenance foreman and production manager, respectively. Stips. 1, 8-9 at Tr. 11-13; S. Br. at 13. In September and December 1991, the Secretary filed petitions proposing assessment of civil penalties against Guess and Shirel alleging they had knowingly authorized, ordered, or carried out Pyro's violations of mandatory safety standards at the mine. The cases were consolidated for proceedings before Judge Melick. Guess and Shirel filed motions for summary decision, asserting that Pyro was not a corporation at the time of the violations and that, accordingly, they were not subject to liability under section 110(c).

Judge Melick granted respondents' motions for summary decision. He noted that, although the Secretary had stated in the civil penalty proposals that Guess and Shirel were acting as agents of a corporate operator at the time of their allegedly violative conduct, the undisputed evidence showed that Pyro was a partnership, not a corporation. 14 FMSHRC at 1827. The judge concluded that section 110(c) of the Act unambiguously provides for individual liability only against agents of corporations. 14 FMSHRC at 1828. Accordingly, he dismissed the proceedings. 14 FMSHRC at 1827, 1828. The Commission granted the Secretary's petition for discretionary review of the judge's dismissal.

II.
Disposition of Issues

The Secretary argues that the judge's literal interpretation of section 110(c) of the Act thwarts the purpose of that provision and the Mine Act's overall purpose of protecting miners. He contends that Congress enacted the provision to reach individuals in large corporate operations, who would otherwise be immune, in order to hold those individuals personally liable for

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1(...continued)

> imprisonment that may be imposed upon a person under subsections (a) and (d) of this section.

30 U.S.C. 820(c). Section 110(c) was carried over without significant change from section 109(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 801 et seq. (1976)(amended 1977)("Coal Act").

decisions resulting in violations of mandatory safety or health standards. The Secretary argues that Pyro is a large operator and, because Pyro's partners are corporations, no individual associated with Pyro is ultimately responsible for the partnership's liabilities. In addition, the Secretary contends that the judge's literal interpretation of the provision leads to the anomalous result that an operator structured as a single corporation would constitute a corporate operator within the meaning of section 110(c), while an operator comprised of two corporations would not. In response, Guess and Shirel maintain that the language of section 110(c) of the Act unambiguously restricts individual liability to certain individuals associated with corporate operators, and that the judge correctly dismissed the civil penalty proceedings brought against them.

The first inquiry in statutory construction is "whether Congress has directly spoken to the precise question at issue." Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842 (1984). If a statute is clear and unambiguous, effect must be given to its language. Chevron, 467 U.S. at 842-43. Deference to an agency's interpretation of the statute may not be applied "to alter the clearly expressed intent of Congress." K Mart Corp. v. Cartier, Inc., 486 U.S. 281, 291 (1988)(citations omitted). Traditional tools of construction, including examination of a statute's text and legislative history, may be employed to determine whether "Congress had an intention on the precise question at issue," which must be given effect. Coal Employment Project v. Dole, 889 F.2d 1127, 1131 (D.C. Cir. 1989)(citations omitted). The examination to determine whether there is such a clear Congressional intent is commonly referred to as a "Chevron I" analysis. Id.(Footnote 2)

Section 110(c) of the Act provides that whenever "a corporate operator violates a mandatory health or safety standard ... any director, officer, or agent of such corporation who knowingly authorized, ordered, or carried out such violation, ... shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (d)." (Emphasis added.) The phrase "corporate operator" is followed by the phrase "of such corporation" (emphasis added), and thus plainly refers to operators that are corporations. Therefore, on its face, section 110(c) of the Mine Act provides for individual liability only against agents of operators that are corporations.

The legislative history of section 110(c) reveals no intention that the section itself should apply to persons other than those associated with corporate operators. Rather, by its terms, section 110(c) subjects specified corporate employees to the "same civil penalties, fines, and imprisonment" to which others are subjected under sections 110(a) and (d). (Emphasis added.) The legislative history of section 110(c) of the Mine Act, and its predecessor, section 109(c) of the Coal Act, manifests a Congressional intent

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2 If a statute is ambiguous or silent on a point in question, a second inquiry, a "Chevron II" analysis, is required to determine whether an agency interpretation of the statute is a reasonable one. Coal Employment Project, 889 F.2d at 1131.

to proceed individually against persons employed by corporate operators "to assure that the decision-makers responsible for illegal acts of corporate operators would also be held personally liable for violations." Richardson v. Secretary of Labor, 689 F.2d 632, 633 (6th Cir. 1982), aff'g, Kenny Richardson, 3 FMSHRC 8 (January 1981), cert. denied, 461 U.S. 928 (1983)(emphasis added). See also H.R. Rep. No. 563, 91st Cong., 1st Sess. 11-12 (1969), reprinted in Senate Subcommittee on Labor, Committee on Labor and Public Welfare, 94th Congress, 1st Sess., Part I Legislative History of the Federal Coal Mine Health and Safety Act of 1969, at 1041-42 (1975). Section 110(c) must be applied in accordance with its unambiguous language.

We reject the Secretary's contention that the judge's literal interpretation of the provision thwarts its purpose and leads to an anomalous result. Section 110(c) is one part of a broader provision of the Mine Act that addresses the assessment of penalties against individuals and operators. We note that in Kenny Richardson the Secretary argued that Congress's decision to limit liability under section 110(c) to directors, officers and agents of corporate operators had a rational basis. 3 FMSHRC at 26-27.

Accordingly, we hold that section 110(c) of the Mine Act provides for individual liability of agents of corporate operators only. Because the evidence is undisputed that Pyro was a partnership, and not a corporation, we affirm the judge's decision dismissing the civil penalty proceedings against Guess and Shirel.

III.
Conclusion

For the reasons discussed above, we affirm the judge's decision.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner