

CCASE:

L & J ENERGY V. SOL (MSHA)

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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

L&J ENERGY COMPANY, INC. :
 :
 v. : Docket No. PENN 93-0015
 :
 SECRETARY OF LABOR, MINE SAFETY :
 AND HEALTH ADMINISTRATION :

DIRECTION FOR REVIEW

ORDER

Petitioner L&J Energy Company, Inc., ("L&J") has filed a Petition for Discretionary Review and/or Motion for Remand for Correction of the Record and Reconsideration of Decision.

L&J asserts that the decision of Administrative Law Judge Avram Weisberger, issued February 24, 1994, is contrary to law, and "contains legal conclusions which are erroneous, and findings of material facts which are not supported by substantial evidence, some of which are the result of a critical clerical error in the record which is recited in the decision."

In response, the Secretary moved for a remand to the judge, who "is in the best position to address and resolve the issues raised by L&J Energy."

Essentially L&J asserts that a particular stipulation of record does not reflect the agreement as to that stipulation reached by counsel and the judge in an off-the-record conference, in chambers. (TR 2-4, Aug. 24, 1993). There is no allegation, however, that the stipulation read by the judge was inaccurately transcribed. Therefore, L&J's assertion of clerical error is without support and its Motion for Correction of the Record is denied. See Fed. Rule Civ. Pro. 60(a).

Although the alleged error is not clerical, given L&J's assertion that the stipulation does not reflect the parties' agreement and the Secretary's motion to remand, in the interest of justice we grant the Petition for Discretionary Review. We remand this matter to the judge, who shall determine

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whether the stipulation in question is complete and correctly represents the agreement of the parties. Upon so doing, the judge may reconsider his decision, if that should be necessary.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner