

CCASE:  
SOL (MSHA) V. W.S. FREY COMPANY  
DDATE:  
19940607  
TTEXT:

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

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
	:	DOCKET NOS. VA 93-59-M
	:	VA 93-80-M
v.	:	VA 93-89-M
	:	
	:	
	:	
W.S. FREY COMPANY, INC.	:	

ORDER

On May 26, 1994, W.S. Frey Company, Inc. filed a petition for discretionary review with the Federal Mine Safety and Health Review Commission under section 113(d)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. at 823(d)(2). That section provides that review of a decision of an Administrative Law Judge may be granted upon specified grounds and upon the affirmative vote of two Commissioners. Such review is discretionary. 30 U.S.C. 823(d)(2)(A). No two members of the Commission voted to grant the petition or otherwise order review under 30 U.S.C. 823(d)(2)(B). Consequently, the decision of the Administrative Law Judge is final as of 40 days after its issuance. 30 U.S.C. 823(d)(1).

Commission Procedural Rule 69(c), 29 C.F.R. 2700.69(c)(1993), permits correction of clerical errors in a judge's decision. In his decision, the judge vacated citation No. 4083442, involving 30 CFR 56.18009, and affirmed citation No. 4083445, involving a violation of 30 CFR 56.12066. ALJ Slip Op. at 37, 44-45 and Exhibits P-5 and P-13. Pursuant to Rule 69(c), we remand this case to the judge to correct the clerical errors at pp. 44, and 49-50 of his decision where he references citation No. 4083445 to a violation of 30 C.F.R. 56.18009, and describes citation No. 4083442, rather than citation No. 4083445, as the citation setting forth the affirmed violation. ALJ Slip Op. at pp. 44, 49-50.

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Accordingly, we remand this aspect of the case to the judge for correction of these apparent clerical errors.

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Mary Lu Jordan, Chairman

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Richard V. Backley, Commissioner

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Joyce A. Doyle, Commissioner

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Arlene Holen, Commissioner