

Oak Grove then filed a petition for discretionary review, which we granted. On review, the Commission affirmed the Judge's decision that Oak Grove violated the safeguard, but concluded that the Judge's determination that the violation was S&S was not supported by substantial evidence in the record. 37 FMSHRC 2687, 2695 (Dec. 2015). The Commission remanded the proceedings to the Judge for an assessment of an appropriate penalty.


On remand, the Judge applied the statutory penalty criteria in section 110(i) of the Mine Act, 30 U.S.C. § 820(i), and assessed a \$50,000 penalty. In determining "whether the operator was negligent," as required by the penalty criteria, the Judge revised his finding that Oak Grove was moderately negligent, and determined that the violation was the result of Oak Grove's high negligence. 38 FMSHRC ___, slip op. at 17-19 (April 6, 2016).

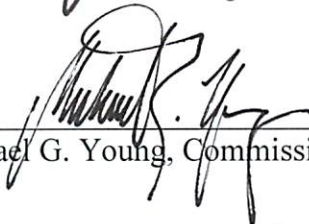
The parties subsequently filed a joint petition for discretionary review. Included in the joint petition for discretionary review is a motion requesting that the Commission approve a settlement agreement between the parties. The Commission has granted the petition for discretionary review in a separate order, and now disposes of these cases.


The parties' joint request for approval of settlement was filed in accordance with section 110(k) of the Mine Act, 30 U.S.C. § 820(k), which provides, in relevant part, that "[n]o proposed penalty which has been contested before the Commission under section 105(a) shall be compromised, mitigated, or settled except with the approval of the Commission." Commission Procedural Rule 31 provides that a "proposed penalty that has been contested before the Commission may be settled only with the approval of the Commission upon motion." 29 C.F.R. § 2700.31(a). The movant is required to provide "facts in support of the penalty agreed to by the parties." 29 C.F.R. §§ 2700.31(b)(1), (c)(1).


In their joint filing, the parties contend that the Judge exceeded his authority when he revised his negligence finding from moderate negligence to high negligence, given that the original determination of moderate negligence had not been appealed, and had become law of the case. PDR at 3 (citing *Manalapan Mining Co.*, 36 FMSHRC 849, 852-54 (Apr. 2014)). The parties represent that a total penalty of \$35,000, rather than the \$50,000 ordered by the Judge, is appropriate based upon the Judge's original conclusion that Oak Grove was moderately negligent.

The parties' joint request for approval of settlement is granted. We determine that the parties have justified that a reduction of the penalty is appropriate considering the Judge's original finding that Oak Grove was moderately negligent. See 30 U.S.C. § 820(i) ("In assessing civil monetary penalties, the Commission shall consider . . . whether the operator was negligent . . ."). Oak Grove is ordered to pay the civil penalty of \$35,000 within 30 days of the issuance of this order.


Mary Lu Jordan, Chairman


Michael G. Young, Commissioner


Robert F. Cohen, Jr., Commissioner


Patrick K. Nakamura, Commissioner


William I. Althen, Commissioner