

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1331 PENNSYLVANIA AVENUE, NW, SUITE 520N
WASHINGTON, D.C. 20004-1710

April 7, 2022

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
 :
v. : Docket No. LAKE 2021-0160
 : A.C. No. 11-03147-536309
 :
 :
 :
KNIGHT HAWK COAL, LLC :

BEFORE: Traynor, Chair; Althen and Rajkovich, Commissioners

ORDER

BY THE COMMISSION:

This case arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). These matters are before us upon the Judge’s January 21, 2022 certification of his order denying the Secretary’s motion to settle in the above captioned case. See Commission Procedural Rule 76(a)(1)(i), 29 C.F.R. § 2700.76(a)(1)(i).

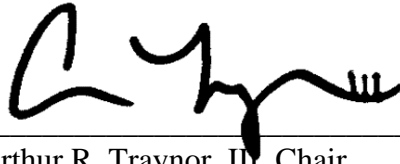
In this case, the Judge denied the motion because he concluded that the Secretary had failed to provide sufficient information to support the removal of a “significant and substantial” (“S&S”) designation. The Judge held that his approval of the settlement would unfairly compromise the public interest by conceding an important issue without reasonable justification for doing so. He further held that factual support was required pursuant to the Commission’s authority to approve settlements under section 110(k) of the Mine Act. 30 U.S.C. § 820(k).¹

Procedural Rule 76 provides that “the Commission, by a majority vote . . . may grant interlocutory review upon a determination that the Judge’s interlocutory ruling involves a controlling question of law and that immediate review may materially advance the final disposition of the proceeding.” 29 C.F.R. § 2700.76(a)(2). Rule 76 further provides that “[i]nterlocutory review by the Commission shall not be a matter of right but of the sound discretion of the Commission.” 29 C.F.R. § 2700.76(a).

¹ In pertinent part, 30 U.S.C. § 820(k) provides, “No proposed penalty which has been contested before the Commission under section 815(a) of this title shall be compromised, mitigated, or settled except with the approval of the Commission.”

Upon consideration of the Judge's certifications, we hereby grant review of the Judge's orders denying the motion and the issue of whether the Secretary has unreviewable discretion to remove an S&S designation from a contested citation without the Commission's approval under section 110(k) of the Mine Act.

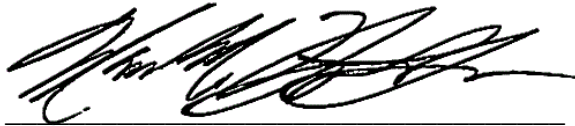
The Secretary's opening brief shall be filed within 30 days of the date of this order. If the operator wishes to file a brief, it shall file that brief 30 days after the filing of the Secretary's brief.



Arthur R. Traynor, III, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner

Distribution:

Alexandra J. Gilewicz, Esq.
Office of the Solicitor
U.S. Department of Labor
201 12th Street South, Suite 401
Arlington, VA 2220
gilewicz.alexandra.j@dol.gov

John Miklos
Director of Health and Safety
Knight Hawk Coal, LLC
500 Cutler-Trico Road
Perry, IL 62272
johnmiklos@knighthawkcoal.com

Chief Administrative Law Judge Glynn F. Voisin
Federal Mine Safety & Health Review Commission
1331 Pennsylvania Avenue, NW, Suite 520N
Washington, DC 20004-1710
GVoisin@fmshrc.gov

Administrative Law Judge Michael Young
Federal Mine Safety & Health Review Commission
1331 Pennsylvania Avenue, NW, Suite 520N
Washington, DC 20004-1710
myoung@fmshrc.gov

John M. McCracken, Esq.
Office of the Solicitor
U.S. Department of Labor
Mine Safety and Health Division
201 12th Street South, Suite 401
Arlington, VA 22202-5452
McCracken.John.M@dol.gov

Emily Toler Scott
Senior Trial Attorney
Office of the Solicitor
U.S. Department of Labor
Mine Safety and Health Division
201 12th Street South, Suite 401
Arlington, VA 22202-5452
scott.emily.t@dol.gov

April Nelson, Esq.
Office of the Solicitor
U.S. Department of Labor
Mine Safety and Health Division
201 12th Street South, Suite 401
Arlington, VA 22202-5452
Nelson.April@dol.gov

Melanie Garris
U.S. Department of Labor
Office of Civil Penalty Compliance
Mine Safety and Health Administration
201 12th Street South, Suite 401
Arlington, VA 22202-5452
Garris.Melanie@dol.gov