

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

AUG 28 2018

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

R. J. MCDONALD, INC.

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Docket No. YORK 2017-136

BEFORE: Althen, Acting Chairman; Jordan, Young, and Cohen, Commissioners

ORDER

This case arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”). The matter is before us upon the Judge’s July 10, 2018 certification of his April 30, 2018 decision denying the Secretary’s motion to approve settlement and his May 11, 2018 decision denying the Secretary’s amended motion to approve settlement of one citation and one order.¹ See Commission Procedural Rule 76(a)(1)(i), 29 C.F.R. § 2700.76(a)(1)(i). The Judge denied the motions to approve the settlement because he concluded that the Secretary had failed to provide sufficient information to support the proposed settlement.

The citation alleges a “significant and substantial” (S&S) violation of the standard at 30 C.F.R. § 56.14101(a)(3) and an unwarrantable failure to comply. In the settlement motion, the Secretary proposed removing both the S&S and unwarrantable failure designations and reducing the proposed penalty from \$2,314 to \$1,107. The order alleges an S&S violation of the standard at 30 C.F.R. § 46.7(a) that was attributable to a high degree of negligence. The Secretary originally proposed a \$10,500 penalty using his special assessment procedures. In the settlement motion, the Secretary proposed reducing the penalty to \$4,377 (using the regular penalty procedures at 30 C.F.R. § 100).


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 On June 7, 2018, the Secretary filed an unopposed motion requesting that the Judge certify his decisions denying the motions to approve settlement for interlocutory review by the Commission. On July 10, 2018, the Judge certified his rulings for review.

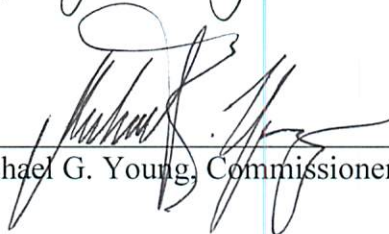
Upon consideration of the Judge's July 10, 2018 order, as well as his April 30 and May 11 decisions, we decline to exercise our right of review and deny interlocutory review. Denial of interlocutory review does not suggest or require any specific action by the Judge or parties in this case. The Secretary may file a new settlement motion. Accordingly, the case is hereby remanded to the Judge for further proceedings consistent with the Mine Act, our procedural rules, and case law.



William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

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