

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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WASHINGTON, DC 20004-1710

AUG 12 2014

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. KENT 2010-1156
	:	
v.	:	
	:	
ARMSTRONG COAL COMPANY, INC.	:	

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

**DECISION**

BY THE COMMISSION:

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”). At issue is whether the Administrative Law Judge abused his discretion by issuing a decision approving settlement despite the Secretary of Labor’s alleged failure to comply with an order to show cause. For the reasons that follow, we affirm the Judge’s decision.<sup>1</sup>

**I.**

**Factual and Procedural Background**

On February 25, 2010, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued a citation to Armstrong Coal Company for a violation of 30 C.F.R.

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<sup>1</sup> The Commission recognizes that the direction for review was issued in April 2012 and briefing was stayed at that time. The stay occurred during a period of rapid buildup in the Commission case load causing regrettable delays in issuing decisions. Having reviewed the petition for discretionary review (“PDR”) in this case, each Commissioner has determined that the PDR sets forth the petitioner’s position clearly and completely. Each Commissioner has further determined that briefing in this case would not aid resolution and would only cause further delay and expense. For this reason, we are issuing our decision without further briefing. The Commission assures every party that appears before it that its positions and arguments are fully and carefully considered by each Commissioner.

§ 75.325(b) at its Parkway Mine. The Secretary subsequently proposed that Armstrong pay a civil penalty of \$40,300 for the violation. The operator challenged the citation and proposed penalty, and the matter was assigned to a Commission Administrative Law Judge.

On August 15, 2011, the parties informed the Judge that they had reached a settlement in this matter. Order to Show Cause at 1 (Feb. 14, 2012). The Judge subsequently directed the parties to submit the settlement motion within the next 20 days, consistent with the requirements of the pre-hearing order. *Id.* at 1-2. The Secretary failed to submit the settlement motion by this deadline and instead informed the Judge that he would file the settlement motion by September 23, 2011. *Id.* at 1. However, the Secretary failed to file the settlement motion on that date as well. *Id.* On February 2, 2012, the Secretary sent the joint settlement motion to Armstrong, requesting that it sign and return the settlement motion to the Secretary. On February 3, 2012, the operator signed and returned the motion to the Secretary.

On February 14, 2012, the Judge issued an Order to Show Cause directing the Secretary to show good cause, within 30 days: (1) why the Secretary had failed to submit the settlement motion within 20 days of August 15, 2011, (2) why the Secretary had failed to submit the settlement motion by September 23, 2011, and (3) why this matter should not be dismissed. Order to Show Cause at 2 (Feb. 14, 2012). On February 21, 2012, within a week of the show cause order, the Secretary submitted the settlement motion to the Judge. *Jt. Mot. to Approve Sett.* Neither the settlement motion nor any other communication to the Judge addressed the three questions in the show cause order. *Id.*

On March 15, 2012, the Judge approved the parties' settlement in a decision approving settlement. *Dec. Approving Sett.* at 1-2 (Mar. 15, 2012). Under the terms of the settlement, the parties agreed to reduce the penalty from \$40,300 to \$25,000 without any modification to the citation. *Id.*

Armstrong filed a petition for discretionary review, which the Commission granted. In its petition, the operator argues that the Judge abused his discretion by approving the parties' settlement despite the Secretary's procedural errors. The operator claims that the Secretary, by failing to explicitly answer the three questions in the show cause order, failed to respond to the show cause order. The operator argues that under Commission Procedural Rule 66(a), 29 C.F.R. § 2700.66(a), this failure to respond to the show cause order should have resulted in the Secretary's default and the dismissal of the Secretary's petition for assessment of civil penalty.<sup>2</sup> In essence, Armstrong argues that the Secretary's procedural errors should relieve it of liability for the penalty amount of \$25,000, which it had agreed to pay in settlement of the case.

Armstrong also argues that the Judge's approval of the settlement was unfair to it, since it had consistently complied with the Judge's instructions while the Secretary had repeatedly

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<sup>2</sup> Rule 66(a) generally requires a Judge to issue an order to show cause before dismissing a case as a result of a party's procedural errors.

disregarded the Judge's instructions to timely file the settlement motion. The operator does not dispute that it agreed to the substantive terms of the settlement or claim prejudice due to the Secretary's delay in submitting the settlement motion.

## II.

### Disposition

The Commission has recognized that the standard of review for a decision approving settlement is abuse of discretion. *Knox County Stone Co.*, 3 FMSHRC 2478, 2480 (Nov. 1981) (“if a judge’s settlement approval . . . is fully supported by the record before him, is consistent with the statutory penalty criteria, and is not otherwise improper, it will not be disturbed. In reviewing such cases, abuses of discretion or plain errors are not immune from reversal.”)

The Commission has also recognized that “a judge possesses the power to manage and control matters pending before him.” *Marfork Coal Co.*, 29 FMSHRC 626, 634 (Aug. 2007). “It is a bedrock principle that effective administration of justice requires that judges possess the capability to manage their own affairs.” *Id.* Furthermore, the Commission prefers to resolve cases on the merits instead of procedural defects. *See M.M. Sundt Constr. Co.*, 8 FMSHRC 1269, 1271 (Sept. 1986); *Coal Prep Services Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995). Accordingly, a Judge has the discretion to excuse procedural errors in appropriate circumstances.

We conclude that the Judge did not abuse his discretion by issuing the decision approving settlement. Dec. Approving Sett. at 1-2 (Mar. 15, 2012). As stated above, the Judge may excuse procedural errors by a party. By approving the settlement, the Judge implicitly accepted the Secretary's submission of the settlement motion as an adequate response to the show cause order. *Id.* In this regard, the Judge excused the Secretary's technical non-compliance with the show cause order, *i.e.*, the Secretary's failure to answer the three questions in the show cause order.<sup>3</sup>

As stated above, Armstrong neither disputes the substantive terms of the settlement agreement nor claims that it was prejudiced by the Secretary's delay in submitting the settlement motion. Rather, Armstrong simply seeks to escape liability for the amount it had agreed to pay as part of the settlement agreement.<sup>4</sup> The Judge appropriately exercised his discretion by approving

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<sup>3</sup> As discussed above, the operator invokes Rule 66(a) when arguing that the Secretary's procedural errors should have resulted in dismissal of the Secretary's petition for assessment of civil penalty. However, this rule does not limit in any way the Judge's discretion to excuse a party's procedural errors.

<sup>4</sup> The operator also argues that it lacked notice that the Secretary had submitted the settlement motion to the Judge, or that the Judge intended to approve the parties' settlement despite the Secretary's technical non-compliance with the show cause order. In this regard, the operator points to the Secretary's failure to serve the operator with a copy of the settlement

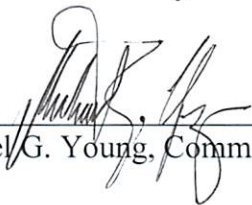
a duly negotiated settlement that quickly and effectively disposed of this matter.


III.


Conclusion

For the reasons set forth above, we affirm the Judge's decision approving settlement.

  
Mary Lu Jordan, Chairman

  
Michael G. Young, Commissioner

  
Robert F. Cohen, Jr., Commissioner

  
Patrick K. Nakamura, Commissioner

  
William I. Althen, Commissioner

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motion prior to filing it with the Judge. However, the operator had signed the joint settlement motion on February 3, 2012, indicating its awareness of, and agreement with, the settlement motion before the Secretary submitted the motion to the Judge on February 21, 2012. Moreover, the Judge was not required to notify the operator before approving a duly negotiated settlement.

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SCANNED