

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, D.C. 20004-1710

April 25, 2014

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket Nos. LAKE 2010-408-R
ADMINISTRATION (MSHA)	:	LAKE 2010-409-R
	:	LAKE 2010-759
	:	
v.	:	
	:	
THE AMERICAN COAL COMPANY	:	

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

ORDER

BY THE COMMISSION:

These proceedings arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”), and involve an order and citation that were issued to The American Coal Company by the U.S. Department of Labor’s Mine Safety and Health Administration (MSHA) following an inspection of a coal stockpile at American’s mine.¹

On January 19, 2010, MSHA inspectors issued Order No. 8418503 to American pursuant to section 103(k) of the Mine Act after observing what they believed to be a “mine fire” on the stockpile.² The MSHA inspectors also issued Citation No. 8418504 for a failure to timely contact MSHA after the operator knew or should have known that the incident occurred pursuant to the requirements of 30 C.F.R. § 50.10.

Although American contested both the citation and the order, an Administrative Law Judge held an expedited hearing exclusively on Order No. 8418503. On September 28, 2010, the

¹ The Commission consolidated the captioned cases pursuant to Commission Procedural Rule 12, 29 C.F.R. § 2700.12, in the Direction for Review that was issued on April 4, 2014.

² Section 103(k) provides that “[i]n the event of any *accident* occurring in a coal or other mine, an authorized representative of the Secretary, when present, may issue such orders as he deems appropriate to insure the safety of any person in the coal or other mine” 30 U.S.C. § 813(k) (emphasis added). Section 3(k) of the Mine Act defines the word “accident” to “include[] a mine explosion, mine ignition, *mine fire*” 30 U.S.C. § 802(k) (emphasis added).

Judge issued a decision vacating the order and concluding that because the inspectors did not observe a flame on the stockpile, the Secretary failed to establish the occurrence of a “mine fire.” 32 FMSHRC 1387, 1390-91 (Sept. 2010) (ALJ). The Secretary petitioned for review of the Judge’s decision, which the Commission granted.

On February 28, 2013, the Commission issued a decision concluding that a “mine fire” does not require the presence of a flame. 35 FMSHRC 380, 387 (Feb. 2013). The Commission stated that the Secretary reasonably interpreted the term “mine fire” in section 3(k) to include “both events marked by flaming combustion and events marked by smoldering combustion that reasonably has the potential to burst into flames.” *Id.* Accordingly, the Commission vacated the Judge’s decision and remanded the matter for further proceedings.

On remand, the matter was assigned to a second Administrative Law Judge.³ On January 16, 2014, that Judge issued a decision that credited the testimony of the inspectors, found that a “mine fire” had occurred on the stockpile, and affirmed the order. 36 FMSHRC 176, 179-80 (Jan. 2014) (ALJ).

On February 14, 2014, American filed a petition for discretionary review of the Judge’s decision on remand, which the Commission granted. In its petition, American maintains, *inter alia*, that the Judge “denied [its] request for additional briefing before rendering her Decision.” PDR at 20.

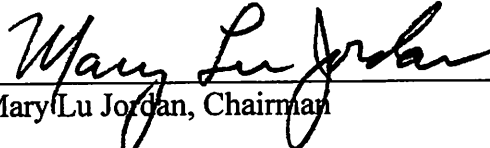
On February 19, 2014, the parties filed a list of joint stipulations with the Judge so that she could issue a decision on Citation No. 8418504, which had been issued for American’s failure to timely notify MSHA regarding the mine fire. The parties agreed that their only dispute with respect to the citation was whether a mine fire occurred on the stockpile. 36 FMSHRC ___, slip op. at 2 (Docket Nos. LAKE 2010-409-R and LAKE 2010-759) (Mar. 3, 2014) (ALJ). The Judge relied on the parties’ stipulations as well as her January 16, 2014 decision in which she concluded that a mine fire had occurred. *Id.* She concluded that American violated section 50.10 when it failed to immediately report the accident to MSHA, and therefore she affirmed Citation No. 8418504. *Id.* at 3-4.

The issue of whether a mine fire occurred on the stockpile is common to the captioned proceedings. We conclude that American’s petitions raise issues which should have been more fully presented by the parties and considered by the Judge on remand. In particular, the issues that were presented to the Judge were somewhat unusual because the Secretary had presented a modified definition of the term “mine fire” to the Commission as compared to the definition that he proffered at the initial hearing. 35 FMSHRC at 384-85. We conclude that the Judge should have provided the parties the opportunity to file briefs before issuing her January 2014 decision.

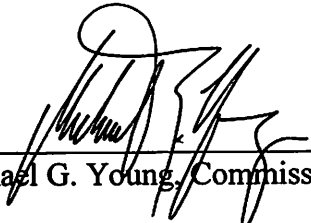
³ The Administrative Law Judge who issued the September 2010 decision retired while the case was on review before the Commission.

Accordingly, the Judge's January 2014 decision regarding Order No. 8418503 is vacated. Because the January 2014 decision formed the basis for the Judge's March 2014 decision regarding Citation No. 8418504, that decision is vacated as well.

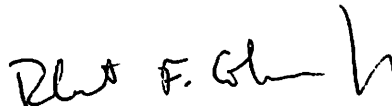
These consolidated cases are remanded to the Judge so that the parties may file briefs fully addressing the issues. The Judge shall conduct further proceedings as necessary.




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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