

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

May 21, 1997

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. LAKE 94-79
	:	
AMAX COAL COMPANY	:	

BEFORE: Jordan, Chairman; Marks, Riley and Verheggen, Commissioners

ORDER

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. (1994) (“Act”). Following an evidentiary hearing, Administrative Law Judge Jerold Feldman sustained Citation No. 4054831, alleging a significant and substantial (“S&S”)¹ violation of 30 C.F.R. § 75.400 by Amax Coal Company (“Amax”). 16 FMSHRC 1837, 1838-43 (August 1994) (ALJ).² Amax petitioned the Commission to review the S&S determination. The Commission vacated and remanded the S&S determination for further consideration of the evidence. 18 FMSHRC 1355, 1357-59 (August 1996). On remand, Judge Feldman again determined that the violation was S&S and directed Amax to pay a civil penalty of \$309. 18 FMSHRC 1868 (October 1996) (ALJ). The Commission thereafter denied Amax’s petition for discretionary review.

Subsequently, Amax filed a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit. On April 26, 1997, the Secretary moved to dismiss the petition because she had modified Citation No. 4054831 to vacate the S&S determination. Accordingly,

¹ The S&S terminology is taken from section 104(d)(1) of the Act, 30 U.S.C. § 814(d)(1), which distinguishes as more serious in nature any violation that “could significantly and substantially contribute to the cause and effect of a . . . mine safety or health hazard”

² This proceeding originally included Docket No. LAKE 94-55, which is no longer at issue.

on May 8, 1997, the court dismissed the petition for review as moot and remanded the case to the Commission for reassessment of penalty.

Pursuant to the court's order, we remand the case to the judge for reassessment of civil penalty.

Mary Lu Jordan, Chairman

Marc Lincoln Marks, Commissioner

James C. Riley, Commissioner

Theodore F. Verheggen, Commissioner