

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR

WASHINGTON, D.C. 20006

June 19, 1995

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

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v

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Docket No. KENT 92-17

DAVIS SHOULDERS, employed by
PYRO MINING COMPANY :

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BEFORE: Jordan, Chairman; Doyle, Holen, and Marks, Commissioners

ORDER

BY THE COMMISSION:

In this civil penalty proceeding pending on review, arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 801 *et seq.* (1988) ("Mine Act"), the Secretary of Labor has filed a Motion to Lift Stay and Dismiss Petition for Review. Respondent has not opposed the motion. In the proceeding below, Administrative Law Judge David F. Barbour concluded that section 110(c) of the Mine Act provides for individual liability only against agents of operators that are corporations. 14 FMSHRC 2099 (December 1992) (ALJ). In his petition for discretionary review, the Secretary asserted that conclusion is erroneous.

In support of his motion, the Secretary states that this issue is controlled by the recent decision of the U. S. Court of Appeals for the District of Columbia Circuit in *Sec. of Labor v. Shirel*, No. 94-1030 (March 29, 1995) (per curiam). The court held that section 110(c) applies only to corporations, not to operators organized as corporate partnerships.

Upon consideration of the Secretary's motion, we grant it. *See generally Golden Oak Mining Co.*, 12 FMSHRC 1758 (September 1990).

Accordingly, we dissolve the stay, vacate the direction for review and dismiss this proceeding.

Mary Lu Jordan, Chairman

Joyce A. Doyle, Commissioner

Arlene Holen, Commissioner

Marc Lincoln Marks, Commissioner