

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

October 23, 2001

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. WEST 2001-162-M
	:	
J. DAVIDSON & SONS	:	
CONSTRUCTION COMPANY, INC.	:	

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

ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994) (“Mine Act”). On August 8, 2001, J. Davidson & Sons Construction Company (“Davidson”) filed with the Commission a petition for interlocutory review of an order issued by Administrative Law Judge Richard Manning on July 9, 2001, denying Davidson’s motion to certify for interlocutory review an earlier order by the judge. *See* 29 C.F.R. § 2700.76(a)(1). In his earlier order, Judge Manning denied Davidson’s request for a show cause order. 23 FMSHRC 359 (Mar. 2001) (ALJ). On August 16, 2001, the Secretary of Labor filed an opposition to Davidson’s petition for interlocutory review, and Davidson subsequently filed a reply to the Secretary’s opposition.

Upon consideration of the pleadings filed by Davidson and the Secretary, we have determined that the judge's denial of Davidson's request for a show cause order does not involve a controlling question of law and that immediate review of that ruling would not materially advance the final disposition of this proceeding. *See* 29 C.F.R. § 2700.76(a)(2). Accordingly, we conclude that Davidson has failed to establish a basis for granting interlocutory review and, therefore, we deny the petition.

Theodore F. Verheggen, Chairman

Mary Lu Jordan, Commissioner

James C. Riley, Commissioner

Robert H. Beatty, Jr., Commissioner

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