

CASES CURRENTLY ON REVIEW BEFORE THE COMMISSION

(As of September 14, 2012)

No.	Case Name Docket No.	Date When Review was Granted	Description of the Case
1	Black Castle Mining Co. WEVA 2006-891-R, et al.	2/24/10	Whether the operator and the mine superintendent violated the regulatory requirement to conduct adequate pre-shift and on-shift examinations.
2	Prairie State Generating Co. LAKE 2009-711-R, et al.	6/30/10	Whether the ALJ properly rejected the operator's challenges to MSHA's actions with regard to roof control and ventilation plans at the mine.
3	Spartan Mining Co. WEVA 2009-403	7/29/10	Whether the ALJ, in concluding that violations of escapeway standards were S&S, properly presumed that an emergency would occur.
4	Manalapan Mining Co. KENT 2008-737	8/9/10	Whether the ALJ properly concluded that violations of coal accumulation requirements were not due to the operator's unwarrantable failure to comply.
5	Consolidation Coal Co. WEVA 2009-371	9/1/10	Whether the ALJ properly concluded that various violations were S&S violations and that one violation was due to an unwarrantable failure to comply.
6	Big Ridge, Inc. LAKE 2009-377, et al.	10/5/10	Whether the ALJ properly concluded that various violations were S&S violations and/or due to an unwarrantable failure to comply.

7	Wolf Run Mining Co. WEVA 2007-600 et al.	10/20/10	Whether the ALJ erred in his negligence and unwarrantable failure analysis.
8	Sequoia Energy, LLC KENT 2008-1059	10/28/10	Whether the ALJ erred in reducing the amounts of certain civil penalties.
9	American Coal Co. LAKE 2010-408-R	11/3/10	Whether the ALJ erred in vacating a section 103(k) order by concluding that no fire had occurred.
10	Mach Mining, LLC LAKE 2009-324-R	11/8/10	Whether the ALJ erred in concluding that the partial blocking of an escapeway did not constitute an “unwarrantable failure.”
11	Twentymile Coal Co. WEST 2008-788-R et al.	11/24/10	Whether the ALJ erred in concluding that violations involving accumulations of coal dust and an inadequate pre-shift exam were S & S and that one violation was due to an “unwarrantable failure.”
12	Performance Coal Co.. WEST 2008-1825	12/28/10	Whether the ALJ erred by significantly reducing a proposed penalty without explaining or acknowledging the reduction.
13	Performance Coal Co. WEVA 2010-1909-R	1/25/11	Whether the ALJ erred in upholding a citation issued by MSHA for the operator’s refusal to allow certain miner’s representatives access to its mine.

14	Clintwood Elkhorn Mining Co. KENT 2011-53-R, et al.	1/27/11	Whether the ALJ erred in dismissing a citation because it was issued during an investigation rather than during an inspection.
15	Knox Creek Coal Co. VA 2010-81-R, et al.	2/4/11	Whether the ALJ erred in concluding that certain violations were not “significant and substantial” because of assumptions that were made concerning abatement.
16	Jim Walter Resources, Inc. SE 2008-881 et al.	3/10/11	Whether the ALJ substantially reduced the amount of a civil penalty without providing an adequate explanation.
17	Emerald Coal Resources PENN 2009-697	3/29/11	Whether the ALJ erred in concluding that impermissible accumulations of coal existed and that the violation was S&S and unwarrantable.
18	Big Ridge, Inc. LAKE 2009-490, et al.	4/9/11	Whether a violation of the lifeline requirement was S&S.
19	Oak Grove Resources SE 2009-261-R	5/6/11	Whether the ALJ erred in finding that a safeguard notice was invalid for lack of specificity.
20	Tilden Mining Co. LAKE 2008-503-M	5/25/11	Whether a standard requiring periodic resistance testing applies to extension cords and power cords.

21	Black Beauty Coal Co. LAKE 2009-565	6/7/11	Whether a violation of a lifeline requirement was S&S.
22	Wake Stone Corp. SE 2010-95-M	6/9/11	Whether the ALJ erred in concluding that the service horns on mobile equipment were maintained in functional condition.
23	Wolf Run Mining Co. WEVA 2006-853 et al	6/10/11	Whether the ALJ erred in concluding that a violation of a particular lightning arrestor standard was not S&S.
24	Mountain Edge Mining, Inc. WEVA 2009-1519	6/24/11	Whether the ALJ erred by upholding a single citation for two distinct violations but doubling the amount of the civil penalty.
25	S & S Dredging SE 2007-447	6/24/11	Whether the ALJ erred by ruling that a violation was not S&S because it was not reasonably likely to result in an injury that would require hospitalization or surgery.
26	Kemper Equipment, Inc. WEVA 2010-1316-RM, et al	6/27/11	Whether a default order should be reopened.
27	Brody Mining, LLC WEVA 2009-1000, et al.	6/30/11	Whether the ALJ erred in vacating S&S and unwarrantable failure designations and reducing the penalty amounts.

28	Black Beauty Coal Co. LAKE 2009-570	7/29/11	Whether the hazard identified in a safeguard must be specifically described.
29	Revelation Energy, LLC KENT 2011-71-R	8/3/11	Whether the ALJ erred in ruling that a partial flyrock event was an “accident” under section 103(k) and MSHA’s regulations.
30	Lafarge North America CENT 2010-4-M	8/15/11	Whether the ALJ erred in concluding that the operator did not have adequate notice of the Secretary’s interpretation of a standard requiring that defective equipment be taken out of service until defects are corrected.
31	Twentymile Coal Co. WEST 2009-241, et al..	9/22/11	Whether the ALJ erred in ruling that the standard governing communication cables had been violated even though the manufacturer had provided additional insulation.
32	Big Ridge, Inc. LAKE 2008-436, et al.	10/17/11	Whether the hazard identified in a safeguard notice was sufficiently described.
33	Connolly-Pacific Co. WEST 2011-1064-RM	11/2/11	Whether the ALJ erred in applying certain broadly worded standards to the operator’s high wall and whether the ALJ findings are supported by substantial evidence.

34	McCoy Elkhorn Corp. and Robinson KENT 2008-986 et al.	11/15/11	Whether the ALJ erred in finding high negligence, unwarrantable failure, and individual liability with regard to a violation for coal accumulations.
35	Mach Mining, LLC LAKE 2009-427	11/10/11 11/18/11	Whether the ALJ erred in ruling that an emergency escapeway violation was not S&S and also in ruling that it was the result of high negligence.
36	Gray v. North Fork Coal Corp. KENT 2010-430-D	11/28/11	Whether the ALJ erred in ruling that no discrimination had occurred.
37	The American Coal Co. LAKE 2007-171 et al.	12/2/11	Whether the hazards identified in safeguard notices were sufficiently described.
38	The American Coal Co. LAKE 2008-038	12/19/11	Whether the hazards identified in safeguard notices were sufficiently described.
39	Jim Walter Resources SE 2011-407-R	1/30/12	Whether the ALJ erred by upholding an imminent danger order issued because of high methane levels.
40	Excel Mining, LLC KENT 2009-1368	2/2/12	Whether the ALJ erred in concluding that violations of equipment permissibility requirements were S&S and due to unwarrantable failures.

41	Jim Walter Resources SE 2011-477-R, et al.	2/9/12	Whether the ALJ erred by upholding the issuance of a section 103(j) order and a section 103(k) order.
42	Newmont USA Limited WEST 2010-652-RM	2/13/12	Whether the ALJ erred by ruling that a non-working area where an auxiliary fan is turned off is an “unventilated area” that must be sealed or barricaded. Whether the ALJ erred in determining that the violation was not an unwarrantable failure. (Cross-petitions filed by the operator and the Secretary).
43	State of Alaska WEST 2008-1490-M	2/17/12	Whether the ALJ erred in concluding that MSHA did not have jurisdiction over certain front-end loaders because the process in question does not constitute “milling.”
44	Pocahontas Coal Co. WEVA 2011-227, et al. (172 dockets)	3/14/12	Whether, on interlocutory review, the ALJ erred in denying operator’s motions to dismiss late-filed petitions for assessment of civil penalties.
45	Black Beauty Coal Co. LAKE 2008-378-R, et al.	3/21/12	On cross petitions, (1) whether the ALJ erred in concluding that the resumption of mining in an area constituted a violation even that there was not a reportable accident and (2) whether an on-shift examination of an area was required because undisputed evidence showed that coal was produced during the shift.

46	Wolf Run Mining Co. WEVA 2008-1265	3/27/12	On interlocutory review, whether the ALJ properly upheld the Secretary's interpretation of section 110(b)(2) of the Mine Act, which addresses flagrant violations resulting from repeated failures to comply.
47	Armstrong Coal Co. KENT 2010-1156	4/24/12	Whether the judge erred by approving a proposed settlement whether the Secretary allegedly failed to comply with a show cause order.
48	Big Ridge, Inc. LAKE 2011-699-R, et al.	5/4/12	Whether the judge erred by affirming a section 103(j) order where no rescue and recovery work was allegedly necessary.
49	Hopkins County Coal KENT 2009-820-R, et al.	5/10/12	Whether MSHA was authorized to gain access to certain personnel records as part of a discrimination investigation without obtaining a warrant.
50	Jim Walter Resources, Inc. SE 2007-109 et al.	7/20/12	Whether the judge erred in applying the "reasonable prudent person" test in determining whether a roof fall violation occurred.
51	Signal Peak Energy, LLC WEST 2010-1130	7/20/12	Whether the judge erred in ruling that a particular accident was immediately reportable in assessing a civil penalty that allegedly exceeded the statutory maximum.
52	Leeco, Inc. KENT 2008-773	7/23/12	Whether the judge erred in finding that the Secretary failed to establish that a violation of a roof control standard was S&S.

53	Stansley Mineral Resources, Inc. LAKE 2011-693-M	8/1/12	Whether the judge erred in assessing a penalty that was less than the statutory minimum.
54	West Alabama Sand & Gravel LAKE 2011-693-M	8/22/12	Whether the judge erred by converting an opposition to a motion for summary decision into a cross-motion for summary decision without giving the other party an opportunity to contest disputed facts.
55	Dawes Rigging & Crane Rental LAKE 2011-693-M	8/30/12	Whether the judge erred in finding a violation in assembling a crane where the assembly crew allegedly followed the manufacturer's procedures and industry practice in assembling the crane.
56	Mill Branch Coal Corp. LAKE 2011-693-M	9/13/12	On cross-petitions for review, whether the judge erred in concluding that the failure to conduct adequate weekly examinations was not an unwarrantable failure and whether the judge erred in affirming an imminent danger order with regard to evacuating the mine through a primary escapeway.
57	Twentymile Coal Co. LAKE 2011-693-M	9/13/12	On cross-petition for review, whether the judge erred in affirming a citation for failing to provide additional insulation for a communication circuit and whether the judge erred in concluding that a citation for failing to conduct and adequate on-shift examination was not supported by substantial evidence.

COMMISSION DECISIONS ON APPEAL

(As of September 14, 2012)

<u>No.</u>	<u>Appellate Case Name and Docket No.</u>	<u>Commission Decision</u>	<u>Status</u>
1	Gray v. FMSHRC 6 th Cir. No. 11-4009 (transferred from D.C. Cir.)	Sec'y on behalf of Gray v. North Fork Coal Corp., 33 FMSHRC 589 (March 2011) (order granting reconsideration in part and remanding case to ALJ).	Briefing order issued
2	Vulcan Construction Materials, LP v. Sec'y on behalf of Dunne, et al. 7 th Cir. No. 11-2860	Sec'y on behalf of Dunne v. Vulcan Construction Materials, LP 33 FMSHRC 1587 (July 2011) (No. LAKE 2011-327-DM) (whether temporary reinstatement granted under section 105(c)(2) continues if a miner brings a section 105(c)(3) action)	Petition for review filed on 8/15/11 Oral argument held on 2/10/12; awaiting decision
3	Black Beauty Coal Co. v. Sec'y, et al. D.C. Cir. No. 11-1306	Black Beauty Coal Co. 33 FMSHRC 1482 (June 2011) (No. LAKE 2009-470) (whether ALJ correctly ruled that operator violated coal accumulations standard and that violation was due to unwarrantable failure and high negligence)	Petition for review filed on 8/29/11 Briefing completed; oral argument scheduled for 10/18/12

4	Lone Mountain Processing, Inc. v. Sec'y D.C. Cir. No. 11-1431	Lone Mountain Processing, Inc., 33 FMSHRC 2357 (Oct. 2011) (Nos. KENT 2011-1153, et al.) (whether Commission erred in denying operator's motion to reopen)	Petition for review filed on 11/7/11 Briefing completed; oral argument scheduled for 10/16/12
5	Cumberland Coal Resources, LP v. Sec'y D.C. Cir. No. 11-1464	Cumberland Coal Resources, LP, 33 FMSHRC 2357 (Oct. 2011) (No. LAKE 2008-189) (whether ALJ erred in ruling that violation of emergency lifeline standard was not S&S)	Petition for review filed 11/23/11 Briefing completed; awaiting oral argument order
6	USA Cleaning Service & Building Maintenance v. Sec'y 7th Cir. No. 11-3637	USA Cleaning Service & Building Maintenance, 33 FMSHRC 2264 (Sept. 2011) (No. EAJ 2011-1) (whether ALJ erred in denying EAJA application for failing to meet eligibility criteria).	Petition for review filed 12/2/11 Briefing completed; oral argument scheduled for 9/14/12
7	Cordero Mining LLC v. Sec'y on behalf of Clapp 10th Cir. No. 12-9502	Sec'y on behalf of Clapp v. Cordero Mining LLC, 33 FMSHRC __ (Dec. 2011) (whether ALJ erred in ruling that discrimination had occurred)	Petition for review filed 1/17/12 Briefing completed; oral argument scheduled for 9/19/12
8	Excel Mining, LLC v. Sec'y D.C. Cir. No. 12-1123	Excel Mining, LLC, 34 FMSHRC __ (Jan. 2012) (No. KENT 2008-1481-R) (whether ALJ erred in finding that violation was unwarrantable)	Petition for review filed 3/7/12 Briefing complete; awaiting oral argument order

9	Pine Ridge Coal Co. v. Sec'y D.C. Cir. No. 12-1164	Pine Ridge Coal Co., 34 FMSHRC __ (Jan. 2012) (whether ALJ erred in finding that violation was S&S and unwarrantable)	Petition for review filed 4/5/12 Petitioner's brief due 10/10/12
10	Oak Grove Resources, LLC v. Sec'y D.C. Cir. No. 12-1223	Oak Grove Resources, LLC, 34 FMSHRC __ (May 2012) (whether ALJ erred in affirming an order for an S&S and unwarrantable violation of weekly examination requirement)	Petition for review filed 5/16/12 Petitioner's brief due 10/5/12
11	Northshore Mining Co. v. Sec'y 8 th Cir. No. 12-2249	Northshore Mining Co., 34 FMSHRC __ (April 2012) (whether ALJ erred in finding S&S violation of lockout regulation)	Petition for review filed 5/25/12 Briefing complete; awaiting oral argument order
12	Big Ridge, Inc. v. FMSHRC 7 th Cir. No. 12-2316	Big Ridge, Inc., 32 FMSHRC __ (May 2012) (whether Commission erred in upholding Secretary's authority to conduct Part 50 audit)	Petition for review filed 6/14/12 Operator's brief filed 9/4/12 Amicus UMWA's brief filed 9/11/12 Secretary's brief due 10/24/12
13	Bickett v. Sec'y 7 th Cir. No. 12-2460	Big Ridge, Inc., 34 FMSHRC __ (May 2012) (whether Commission erred in upholding Secretary's authority to conduct Part 50 audit) (petition by miners)	Petition for review filed 6/20/12 (consolidation with 7th Cir. No. 12-2316) Petitioners' brief due 9/24/12
14	Cumberland River Coal Co. v. Sec'y obo Howard 6 th Cir. No. 12-3918	Sec'y obo Howard v. Cumberland Coal Co., 34 FMSHRC __ (June 2012) (whether ALJ erred in order reinstating miner as discrimination remedy)	Petition for review filed 7/26/12 Petitioner's brief filed 9/7/12 Secretary's and miner's brief due 10/9/12