

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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September 6, 2016

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

v.

COUCH AGGREGATES, LLC,
Respondent.

CIVIL PENALTY PROCEEDINGS

Docket No. SE 2014-455
A.C. No. 01-03130-357670

Docket No. SE 2015-29-M
A.C. No. 01-03130-363329

Mine: B & R Sand & Gravel

ORDER DENYING RESPONDENT’S MOTION FOR PARTIAL SUMMARY DECISION

Before: Judge Simonton

On August 11, 2016, the Respondent filed with the undersigned a Motion for Partial Summary Decision and Incorporated Memorandum in the above-captioned proceedings.¹ On August 24, 2016, the Secretary filed a Response, opposing the Respondent’s Motion. The relevant undisputed facts are as follows:²

- On May 28, 2014, Bobby Stroud was a miner and employee of Couch Aggregates at the B & W Sand & Gravel Mine.
- On May 28, 2014, Mr. Stroud was involved in an incident in the electrical control room that resulted in his injury.
- On June 3, 2014, MSHA Inspector Timothy S. Schmidt issued Citation No. 8834740 for a violation of 30 C.F.R. §50.10(b) for failure to notify MSHA within 15 minutes of an accident occurring at a mine which had a reasonable potential to cause death. The Secretary assessed a penalty of \$5,000.00.
- On June 3, 2014, MSHA Inspector Timothy S. Schmidt issued Citation No. 8834742 alleging a violation of 30 C.F.R. §56.12040. The citation alleged that Couch Aggregates violated the standard because operating controls for the starters in two electrical disconnect boxes were not located so that they could be operated

¹ Respondent’s motion requests Summary Decision. However, Dockets SE 2014-455 and SE 2015-29 were consolidated on December 11, 2015. In their Motion for Summary Decision, the Respondent only requests summary judgment for Docket SE 2014-455, and only addresses that citation in their argument. Thus, the Respondent’s Motion will be read as seeking Partial Summary Decision.

² In its motion, Respondent lists undisputed facts mandating relief, all of which, Respondent claims, are taken entirely from documents produced by MSHA. In its response, the Secretary disputes all or part of each of these facts. Therefore, the relevant facts listed above include only those portions that are not disputed by either party.

without danger of contacting energized conductors. The Secretary assessed a penalty of \$17,800.00.

The Respondent argues that Partial Summary Decision should be granted because the alleged undisputed facts establish that no injury with the reasonable potential to cause death occurred, and Couch Aggregates was never on notice that an accident with an injury with the reasonable potential to cause death occurred. The Respondent argues that by the time Couch Aggregates learned of the purported injury to Mr. Stroud, it was already apparent that the injury did not have a reasonable potential to cause death. Because Mr. Stroud recovered from the incident so quickly, the operator was not required to notify MSHA within the requisite 15 minute time frame. Therefore, the Respondent argues that the Motion for Partial Summary Decision should be granted.

The Secretary argues that none of the facts provided by the Respondent are undisputed because the Secretary has not been able to verify their accuracy through discovery. The Secretary argues that none of the provided evidence has been properly verified or supported by reference to affidavits or other verified documents. Aside from disputing or partially disputing each provided fact, the Secretary provides additional facts that the Respondent has yet to stipulate are true or undisputed. Even if the Respondent's facts are undisputed, the Secretary argues that genuine issues of material of fact exist regarding the severity of Mr. Stroud's injury, whether an electrical shock occurred, and whether Mr. Stroud experienced unconsciousness. Therefore, the Secretary argues that the Contestant's Motion for Summary Decision should be denied.

The Court may grant summary decision where the "entire record...shows: (1) That there is no genuine issue as to any material fact; and (2) That the moving party is entitled to summary decision as a matter of law." 29 C.F.R. §2700.67(b); *see also UMWA, Local 2368 v. Jim Walter Res., Inc.*, 24 FMSHRC 797, 799 (July 2002); *Energy West Mining*, 17 FMSHRC 1313, 1316 (Aug. 1995) (*citing Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986), which interpreted Fed.R.Civ.P. 56). The Commission has analogized its Rule 67 to Federal Rule of Civil Procedure 56, which authorizes summary judgments upon a proper showing of a lack of a genuine, triable issue of material fact. *Hanson Aggregates New York, Inc.*, 29 FMSHRC 4, 9 (Jan. 2007). A material fact is "a fact that is significant or essential to the issue or matter at hand." *Black's Law Dictionary* (9th ed. 2009, *fact*). "There is a genuine issue of material fact if the nonmoving party has produced evidence such that a reasonable factfinder could return a verdict in its favor." *Greenberg v. Bellsouth Telecommunications, Inc.*, 498 F.3d 1258, 1263 (11th Cir. 2007)(citation omitted). The court must evaluate the evidence "in the light most favorable to ... the party opposing the motion." *Hanson Aggregates*, 29 FMSHRC at 9. Any inferences drawn "from the underlying facts contained in [the] materials [supporting the motion] must be viewed in the light most favorable to the party opposing the motion." *Id.* Though the moving party bears the initial burden of informing the court of the basis for its motion, it is not required to negate the nonmoving party's claims. *Celotex*, 477 U.S. at 323. "When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Scott v. Harris*, 550 U.S. 372, 380 (2007) (citation omitted).

In the instant case, there are clearly genuine issues of material fact in dispute such that summary decision must be denied. The Secretary's response disputes part or all of the facts that the Respondent alleges are undisputed concerning the events surrounding the citation. Most important among these issues is the extent of Mr. Stroud's injuries, whether Mr. Stroud lost consciousness and if so for how long, and whether that period of time suffices to categorize the injury as reasonably likely to cause death. In addition, there remains dispute regarding the reasons and motives behind Couch Aggregate's decision not to notify MSHA of the injury at any time during or after the event. These dockets are scheduled to be heard on October 27-28, 2016 in Montgomery, AL, at which time the parties can present evidence concerning the incident event giving rise to the citation and the events that preceded and followed it. Accordingly, the Respondent's Motion for Summary Decision is **DENIED**.



David P. Simonton
Administrative Law Judge

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