

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1730 K STREET, N.W., 6TH FLOOR
WASHINGTON, D.C. 20006-3868

June 10, 1999

SECRETARY OF LABOR	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. CENT 98-268-M
Petitioner	:	A. C. No. 29-01882-05502 LUO
	:	
v.	:	
BOWEN INDUSTRIES	:	
INCORPORATED,	:	Ivanhoe Concentrator
Respondent	:	

DECISION APPROVING SETTLEMENT
ORDER TO AMEND
ORDER TO MODIFY
ORDER OF DISMISSAL

Before: Judge Merlin

This case is before me upon a petition for assessment of a civil penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977. On April 26, 1999, an order was issued disapproving the joint settlement motion because the motion was signed and filed by an individual who described herself as a law clerk. I also held that the reasons offered in the settlement were inadequate to justify the proposed settlement.

On May 25, 1999, the parties filed a second settlement motion which was signed by an attorney in the Office of the Solicitor. The parties' settlement motion seeks a penalty reduction for the one violation involved from \$1,600 to \$188.

The subject citation was issued under section 104(d)(1) of the Mine Act for a violation of 30 C.F.R. § 56.11027 because adequate scaffolding was not provided for the employees installing an iron beam on a wall at the maintenance shop. An employee was standing on the scaffold railing trying to reach the iron beam. The inspector also noted that the employees were warned a week earlier by a company inspector that the scaffolding was inadequate.

30 C.F.R. § 56.11027 provides:

Scaffolds and working platforms shall be of substantial construction and provided with handrails and maintained in good condition. Floor boards shall be laid properly and the scaffolds and working platforms shall not be overloaded. Working platforms shall be provided with toeboards when necessary.

The parties propose to amend the standard violated to 30 C.F.R. § 56.11001 which requires that safe access be provided to all working places. As I stated in my April 26 order, the originally cited standard, 30 C.F.R. § 56.11027, sets forth requirements for the construction of scaffolds while the condition described by the inspector addressed the location of the scaffold.

Part 56.11001 is the appropriate standard for the conditions alleged in the citation. Therefore, I approve the parties's request to amend the citation.

The parties also request that the citation be modified from a 104(d)(1) citation to a 104(a) citation, that negligence be reduced from high to moderate and that the likelihood of injury be reduced from highly likely to reasonably likely. The parties state that negligence is less than first thought because the foreman for the employees working on the iron beam was not present when the citation was issued and was not aware that the employees were improperly using the scaffolding. Until the time of the citation, the scaffolding was at a proper height to provided safe access to the iron beam. Instead of adding a section to the scaffold, the employee without the knowledge of the supervisor stepped onto the access ladder with his right foot about one foot above the platform and balanced himself by stepping on the bottom section of the cross brace with his left foot. Moreover, the previous problem with the scaffolding identified by the company inspector referred to in the citation and which formed the basis for the unwarrantable failure finding is not the same as the circumstances cited for this violation. The earlier problem concerned the adequacy of the construction of the scaffolding in that toeboards and railings were not in place. The height of the platform was sufficient to provide safe access to the iron beam. The parties advise that the operator did in fact promptly install the toeboards and railings. According to the parties, gravity is less than originally found because the employees were working within the confines of the scaffolding platform only a few feet above the platform. In addition, the employees were wearing safety belts and lines at the time of the inspection thereby protecting them from falls from the platform itself.

I have carefully reviewed the second settlement motion and have concluded that the facts set forth therein sufficiently justify approval of the recommended settlement under the criteria of section 110(i) of the Act.

In light of the foregoing, it is ORDERED that the motion for approval of settlement be APPROVED.

It is further ORDERED that Citation No. 7862421 is AMENDED to cite a violation of 30 C.F.R. § 56.11001.

It is further ORDERED that Citation No. 7862421 is MODIFIED from a 104(d)(1) citation to a 104(a) citation, from high negligence to moderate negligence and from highly likely to result in an injury to reasonably likely to result in an injury.

It is further ORDERED that the operator having paid, this case is DISMISSED.

Paul Merlin
Chief Administrative Law Judge

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