

CCASE:
MSHA V. OLD BEN COAL
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
May 18, 1981
SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),

v.

Docket No. VINC 74-157
IBMA 76-90

OLD BEN COAL CORPORATION

DECISION

Old Ben Coal Corporation initiated this proceeding by filing an application for review of an order of withdrawal issued March 6, 1974, under section 104(c)(2) of the Coal Mine Health and Safety Act of 1969, 30 U.S.C. §801 et seq. (1976)(amended 1977). The order alleged that Old Ben had violated 30 C.F.R. §75.400. Following a hearing, the administrative law judge determined that a complete inspection of the mine, disclosing no similar violations, intervened between the issuance, on November 15, 1972, of the underlying 104(c)(1) notice and order and the issuance of this 104(c)(2) withdrawal order. Accordingly, the judge vacated the withdrawal order. The appeal of the Mining Enforcement and Safety Administration (MESA) was pending before the Interior Department Board of Mine Operations Appeals on the effective date of the Mine Safety and Health Act of 1977 and, therefore, is before this Commission for disposition. 30 U.S.C. §961 (Supp. III 1979).

In holding that a complete inspection of the mine had occurred the judge stated, "The record is clear that the entire underground mine was inspected by this series of spot health, safety, health and safety ventilation and [section] 103 inspections and that no section 104(c)(2) orders were issued during this series." Dec. 12. We have carefully reviewed the evidence and conclude that the judge's finding is supported by the record. Accordingly, the decision is affirmed. 1/

Richard V. Backley, Chairman

Frank F. Jestrab, Commissioner

A. E. Lawson, Commissioner

Marian Pearlman Nease, Commissioner

1/ See CF&I Steel Corp., 2 FMSHRC 3459 (1980).

Editors Note: A copy of the Administrative Law Judge's Decision is attached.

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Distribution Old Ben Coal Corp., VINC 74-157

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