

CCASE:
MSHA V. CANON COAL
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FMSHRC-WDC
April 7, 1987

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

v. Docket No. PENN 85-201

CANON COAL COMPANY

BY: Ford, Chairman; Backley, Doyle, Lastowka and Nelson,
Commissioners

DECISION

BY THE COMMISSION:

This civil penalty proceeding involving Canon Coal Company ("Canon") arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1982). Commission Administrative Law Judge Roy J. Maurer issued a decision that in relevant part vacated a withdrawal order alleging a violation of 30 C.F.R. § 75.200.8 FMSHRC 696, 705-10 (May 1986) (ALJ). 1/ The Commission directed review on its own motion (30 U.S.C. § 823(d)(2)(B)), limiting review solely to the legal question of whether the judge properly had construed section 75.200. For the reasons that follow, we conclude that the essence of the judge's decision is consistent with the appropriate construction of this important standard and we affirm.

On October 9, 1984, a fatal roof fall accident occurred in Canon's Pitt Gas Mine, an underground coal mine located in Clarksville,

1/ In pertinent part, section 75.200 provides:

Each operator shall undertake to carry out on
a continuing basis a program to improve the roof

control system of each coal mine and the means and measures to accomplish such system. The roof and ribs of all active underground roadways, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs.

(Emphasis supplied.)

Pennsylvania. Following its accident investigation, the Department of Labor's Mine Safety and Health Administration ("MSHA") issued to Canon several citations and orders, all alleging violations of section 75.200. In his decision, Judge Maurer, in relevant part, vacated the order that is the subject of the present proceeding. In reaching this conclusion, the judge stated, among other things, that "[w]hile ... it is not necessary to prove a violation of the roof control plan in order to sustain a violation of [section] 75.200, the evidence must show that the operator knew or should have known that a condition existed that required additional support and yet it was not provided." 8 FMSHRC at 709. Focusing on this language, the Commission on its own motion directed review of that portion of the judge's decision vacating the order. (The Secretary did not seek review of the judge's decision.)

Section 75.200, which reflects section 302(a) of the Mine Act, 30 U.S.C. § 862(a), is a mandatory safety standard of central importance in the crucial regulatory area of roof control in underground coal mines. With respect to the requirement in section 75.200 that roof and ribs "be supported or otherwise controlled adequately," this standard is expressed in general terms so that it is adaptable to myriad roof condition and control situations. See generally *Kerr-McGee Corp.*, 3 FMSHRC 2496, 2497 (November 1981). Questions of liability for alleged violations of this broad aspect of this standard are to be resolved by reference to whether a reasonably prudent person, familiar with the mining industry and the protective purpose of the standard, would have recognized the hazardous condition that the standard seeks to prevent. Cf. *Ozark-Mahoning Co.*, 8 FMSHRC 190, 191-92 (February 1986); *Great Western Electric Co.*, 5 FMSHRC 840, 841-42 (May 1983); *U.S. Steel Corp.*, 5 FMSHRC 3, 5 (January 1983); *Alabama By-Products Corp.*, 4 FMSHRC 2128, 2129 (December 1982). Specifically, the adequacy of particular roof support or other control must be measured against the test of whether the support or control is what a reasonably prudent person, familiar with the mining industry and protective purpose of the standard, would have provided in order to meet the protection intended by the standard. We emphasize that the reasonably prudent person test contemplates an objective -- not subjective -- analysis of all the surrounding circumstances, factors, and considerations bearing on the inquiry in issue. See, e.g., *Great Western*, supra, 5 FMSHRC at 842-43; *U.S. Steel*, supra, 5 FMSHRC at 5-6.

While the judge's decision contains some language not completely congruent with the wording of the reasonably prudent person test consistently applied by this Commission in

determining the applicability of broad standards to particular factual circumstances, we are satisfied that the judge applied that construction in essence and that his decision is consistent with it. In its post-hearing brief, Canon expressly had urged upon the judge the reasonably prudent person construction of this standard. The judge proceeded to examine all the objective circumstances surrounding the roof fall. 8 FMSHRC at 700-10. He concluded, in essence, that the Secretary had failed to produce evidence that objective signs existed prior to the roof fall that would have alerted a reasonably prudent person to install additional roof support beyond the support that actually had been provided by the operator. 8 FMSHRC at 710. Therefore, because the judge's application

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of the standard is consistent with the appropriate interpretative approach and this was the limited concern of our direction for review, we find no reason to disturb the judge's holding.

Accordingly, the judge's decision is affirmed insofar as it is consistent with this decision.

Ford B. Ford, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

James A. Lastowka, Commissioner

L. Clair Nelson, Commissioner

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