

CCASE:

MSHA V. ASARCO

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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.

December 26, 1990

SECRETARY OF LABOR.

MINE SAFETY AND HEALTH

ADMINISTRATION (MSHA)

v. Docket Nos. SE 88-82-RM

SE 88-83-RM

ASARCO, INC. SE 89-67-M

Before: Backley, Acting Chairman; Doyle, Holen and Nelson, Commissioners

DECISION

BY THE COMMISSION:

This consolidated contest and civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. •801. et seq. (1988) ("Mine Act"), and concerns a discovery dispute between the Secretary of Labor and ASARCO, Inc. ("Asarco"). On November 21, 1989, Commission Administrative Law Judge Avram Weisberger granted Asarco's motion to dismiss these proceedings because the Secretary refused to comply with his order requiring her to produce certain documents for inspection by Asarco. ASARCO, Inc., 11 FMSHRC 2351 (November 1989)(ALJ) For the reasons that follow, we vacate the judge's order and remand this matter for further consideration consistent with this decision.

I.

Factual and Procedural Background

Asarco operates the Immel Mine, an underground zinc mine located in Knox County, Tennessee. A fatal accident occurred at the Immel Mine on July 15, 1988, when an electrician contacted an energized 4.160-volt terminal located inside a transfer switch cabinet. An electrical apprentice assisting him escaped serious injury. Following an investigation, Don B. Craig, a supervisory inspector of the Department of Labor's Mine Safety and Health Administration ("MSHA"), issued Asarco two citations alleging violations of 30 C.F.R. •57.12017 & .12019 because the top terminals in the cabinet were not de-energized and because suitable clearance was not provided when the electrician was cleaning the terminals and insulators Asarco contested the citations.

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On March 9, 1989, during the course of pretrial discovery, Asarco served the Secretary with a request for production of documents in accordance with Commission Procedural Rules 55 and 57, 29 C.F.R. •2700.55 and 2700.57. The request for production contained nine requests for

