

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR  
WASHINGTON, D.C. 20006

March 31, 1997

SECRETARY OF LABOR, :  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), :  
on behalf of KENNETH HANNAH, :  
PHILIP PAYNE, and FLOYD MEZO :  
 :  
v. : Docket No. LAKE 94-704-D  
 :  
CONSOLIDATION COAL COMPANY :

BEFORE: Jordan, Chairman; Marks and Riley Commissioners<sup>1</sup>

DIRECTION FOR REVIEW AND ORDER

BY THE COMMISSION:

This discrimination proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994) (the Mine Act or Act). On December 10, 1996, the Commission reversed Administrative Law Judge Gary Melick's determination that the miners' work refusal was unreasonable and unprotected and his finding that the operator's subsequent conduct did not violate the Mine Act and remanded this matter to the judge for computation of a backpay award and assessment of a civil penalty. 18 FMSHRC 2085 (December 1996). On February 5, 1997, the judge issued a partial decision, stating that the parties had agreed to the amounts of backpay and interest to be awarded, but that significant issues remained concerning the assessment of a civil penalty. 19 FMSHRC 435 (February 1997) (ALJ). On February 18, 1997, Consolidation Coal Company (Consolidation) filed a petition for discretionary review of that decision. Thereafter, on March 6, 1997, the judge issued a final decision on the assessment of a civil penalty. 19 FMSHRC \_\_\_\_ (March 1997). On March 28, 1997, Consolidation filed an additional petition for discretionary review of the March 6, 1997 decision.

Consolidation's February 18, 1997 petition for discretionary review is denied.

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<sup>1</sup> Pursuant to section 113(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 823(c), this panel of three Commissioners has been designated to exercise the powers of the Commission.

Consolidation's March 28, 1997 petition for discretionary review is granted. In addition, pursuant to section 113(d)(2)(B) of the Mine Act, 30 U.S.C. ' 823(d)(2)(B), the Commission on its own motion, directs review of the March 6, 1997 decision on the ground that it may be contrary to law in that the judge may have failed to make all the requisite findings under section 110(i) of the Mine Act, 30 U.S.C. ' 820(i), in assessing penalties against Consolidation.

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Mary Lu Jordan, Chairman

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Marc Lincoln Marks, Commissioner

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James C. Riley, Commissioner

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Mary Lu Jordan, Chairman

For the Commission: