

CCASE:
CLIMAX MOLYBDENUM V. MSHA
DDATE:
19791031
TTEXT:
FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
October 31, 1979
CLIMAX MOLYBDENUM COMPANY,
a division of AMAX INC.
v.

Docket Nos. DENV 79-102-M
through
DENV 79-105-M

SECRETARY OF LABOR, MINE SAFETY
AND HEALTH ADMINISTRATION
(MSHA),
and
OIL, CHEMICAL, AND ATOMIC
WORKERS' INTERNATIONAL UNION,
LOCAL 2-24410
ORDER

On September 21, 1979, the Commission granted a petition for discretionary review, filed by Climax Molybdenum Company, of an administrative law judge's decision. Climax has filed its brief on review of that decision and has also filed a motion to accept attachments to its brief "as part of the record". The attachments are a deposition of an MSHA inspector, with an outline of the deposition; and a Mine Safety and Health Administration (MSHA) document purporting to interpret and explaining MSHA's enforcement of the silica dust standard. Climax states that the material would support its arguments in its brief, and that the Secretary of Labor would not be prejudiced by the granting of the motion, because attorneys for the Secretary were present at the deposing of the inspector and received copies of the deposition transcript, and because the Secretary supplied the MSHA document.

Section 113(d)(2)(C) of the Federal Mine Safety Health Act of 1977, 30 U.S.C. §801, states what constitutes the record on review of a judge's decision: the record upon which the decision of the judge was based, the rulings on the parties' proposed findings and conclusions, the judge's decision, the petition for discretionary review and responses thereto, the direction for review, and the parties' briefs on review. The section also states that "[n]o other material shall be considered by the Commission upon review. ... If the Commission determines that further evidence is necessary on an issue of fact it shall remand the case for further proceedings before the administrative law judge." These provisions evince the Congress'

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adjudication process is best served if the administrative law judge is first given the opportunity to admit and examine all the evidence before making his decision. The motion to accept the attachments is therefore denied; the attachments will not be considered by the Commission. See *Helvetia Coal Co.*, 1 FMSHRC 26, 1 BNA MSHC 2070 (1979).

We note that Climax's brief relies upon the material attached to its brief. References to this material appear on pages 4, 5 and 12 of the brief. Within 15 days of the issuance of this order, Climax may either file revisions of those pages or a new brief that does not cite or rely upon the excluded material.

The Secretary of Labor has filed a motion requesting an extension of time for filing its response brief from November 5, 1979 to November 19, 1979. In view of the need for modifications in Climax's brief, the Secretary's brief is due within 20 days after Climax's new brief or revisions are served upon the Secretary.