

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

February 27, 2002

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket Nos. WEST 2000-63-M
	:	2000-78-M
ORIGINAL SIXTEEN	:	2000-195-M
to ONE MINE, INC.	:	

BEFORE: Verheggen, Chairman; Jordan and Beatty, Commissioners

ORDER

BY: Jordan and Beatty, Commissioners

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994) (“Mine Act”). On November 26, 2001, the Commission received from Original Sixteen to One Mine, Inc. (“Original”) a petition for discretionary review challenging the decision issued on October 19, 2001, by Administrative Law Judge Michael Zielinski. On November 28, 2001, a majority of the Commission granted the petition for the limited purpose of affording Original an opportunity to amend its petition to comply with the requirements of section 113(d)(2)(A)(iii) of the Mine Act, 30 U.S.C. § 823(d)(2)(A)(iii), and Commission Procedural Rule 70(d), 29 C.F.R. § 2700.70(d). On December 17, 2001, Original filed an amended petition for discretionary review. On January 2, 2002, the Commission received an opposition from the Secretary of Labor. After complete consideration of the operator’s amended petition for review, on January 30, 2002, we declined to grant review of the amended petition for discretionary review and vacated the direction for review issued on November 28.

On February 8, 2002, Original filed with the Commission a petition for reconsideration, requesting that the Commission reconsider its denial of Original’s amended petition on January 30. It submits that its request is based on “irrational, arbitrary, and capricious attitudes and actions” of inspectors with the Department of Labor’s Mine Safety and Health Administration (“MSHA”). Mot. at 2. Original explains that its relationship with MSHA has become increasingly antagonistic and that the citations it wishes to challenge were subjectively written by inadequately trained MSHA inspectors. *Id.* In addition, Original set forth an identical version of

the amended petition for discretionary review that it had filed on December 17. *Id.* at 2-5. On February 12, 2002, the Secretary filed an opposition to the petition for reconsideration, setting forth the same grounds of opposition that she previously had submitted in response to Original's amended petition for discretionary review.

In its petition for reconsideration, Original has not provided the Commission with facts or legal arguments that it believes we failed to consider or misapprehended in denying the amended petition for review, but has merely reiterated arguments that it made to the Commission in its amended petition for discretionary review. With respect to petitions for reconsideration, our case law requires that the petitioner must bring to the Commission's attention facts or legal arguments he or she believes we overlooked. In other words, the petition for reconsideration must do more than merely raise arguments we have already considered. *See Island Creek Coal Co.*, 23 FMSHRC 138, 139 (Feb. 2001). In its petition for reconsideration, Original has failed to provide any new information. In its amended petition for discretionary review, Original alleges that the citations issued by the inspectors were subjective (Amended PDR at 2, 3); that citations demonstrated inconsistent enforcement action (*id.* at 5); and that citations reflected MSHA's antagonistic attitude (*id.* at 5-6). We considered such arguments in declining to accept review of Original's amended petition, and see no reason to reconsider that exercise of our discretion. *See* 30 U.S.C. § 823(d)(2)(A)(i) ("Review by the Commission shall not be a matter of right, but of the sound discretion of the Commission"); *Eagle Energy, Inc. v. Sec'y of Labor*, 240 F.3d 319, 324-25 (4th Cir. 2001) (providing that Mine Act contemplates that Commission sometimes will not consider issues presented for its review).

For the foregoing reasons, having considered Original's request, the Secretary's response, and the Commission's January 30 order, we deny Original's petition for reconsideration.¹

Mary Lu Jordan, Commissioner

Robert H. Beatty, Jr., Commissioner

¹ Chairman Verheggen voted in favor of accepting the operator's amended petition for discretionary review, and therefore would grant the petition for reconsideration.

Distribution

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