

**BEFORE THE BOARD OF APPEALS
CHARLESTON, WEST VIRGINIA**

PRODUCTION EFFICIENCY CORPORATION,

Petitioner,

v.

**Docket No. 09-NOV-30
Violation No. 223-0093-2009**

**WEST VIRGINIA OFFICE OF MINERS' HEALTH,
SAFETY AND TRAINING,**

Respondent.

FINAL ORDER

On July 21, 2010, came the West Virginia Office of Miners' Health, Safety and Training (OMHST), by counsel, Elaine L. Skorich, Assistant Attorney General, pursuant to an Order entered by the Board of Appeals (Board) setting the case for hearing pursuant to 37 CSR 1-2. Inspectors Wayne A. Pauley and Randall Vance were present as OMHST's witnesses. Production Efficiency Corporation (PEC) was present with its president and witness, Sam Woods, and its counsel Michael T. Cimino.

Prior to the taking of evidence, the Board *sua sponte* changed the caption of the case to that outlined above. Also, the Board accepted and admitted the stipulations of the parties. After OMHST presented its case and rested, PEC moved for a directed verdict which was denied.

FINDINGS OF FACT

1. The subject piece of equipment involved was energized at the time Inspector Pauley observed it.
2. The lid/top of the subject piece of equipment was off at the time Inspector Pauley observed it.
3. PEC's employees were either troubleshooting or testing the subject piece of

RCVD AUG 30 2010

equipment when the equipment was energized and the lid was off.

4. At the time that the equipment was energized and the lid was off, the work was not completed by the PEC employees.

5. The PEC employees did not have protective with them as required by statute.

CONCLUSION OF LAW

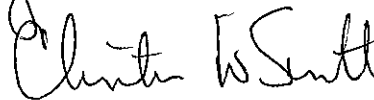
OMHST has proven by a preponderance of the evidence that PEC violated 36 CSR 20-3.1(b) when its employees were either working on or troubleshooting a piece of energized equipment with the lid off and while they were without protective gloves.

DISPOSITION

The Board by unanimous vote determined that Violation Number 233-0093-2009 is affirmed as written.

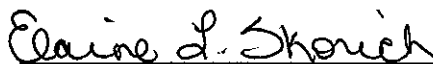
The Board notes and preserves the objections of both parties.

ENTERED THIS 26th CW DAY OF August, 2010.



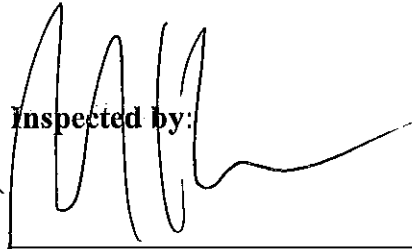
Clinton W. Smith, Chairman
Board of Appeals

Prepared by:



Elaine L. Skorich
Assistant Attorney General
1615 Washington Street, East
Charleston, West Virginia 25311-2126
Counsel for OMHST

Inspected by:



Michael T. Cimino, Esquire
Jackson Kelly PLLC
500 Lee Street, East - Suite 1600/P. O. Box 553
Charleston, WV 25322
Counsel for PEC