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Transcript of the Testimony of Kevin Lewis McAlpine

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STATEMENT UNDER OATH
OF
KEVIN LEWIS MCALPINE

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at the National Mine Health and Safety Academy, 1301 Airport Road, Beaver, West Virginia, on Tuesday, July 6, 2010, beginning at 1:06 p.m.

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ATTORNEY BAXTER:

Let's go on the record. My name is Derek
Baxter. Today is July 6th, 2010. I'm with the Office
of the Solicitor, U.S. Department of Labor. With me
is Erik Sherer, an accident investigator with the Mine
Safety and Health Administration, MSHA, the agency of
the U.S. Department of Labor. Also present are
several people from the State of West Virginia. I ask
that they state their appearance for the record.

MR. FARLEY:

I'm Terry Farley, with the West Virginia
Office of Miners' Health, Safety and Training.

MR. TUCKER:

Bill Tucker, with Miners' Health, Safety
and Training.

MS. SPENCE:

I'm Beth Spence with the Governor's
independent team.

ATTORNEY BAXTER:

Mr. Sherer, Mr. Farley and Ms. Spence
will be conducting the questioning today.
All members of the Mine Safety and Health
Accident Investigation Team and all members of the

1 State of West Virginia Accident Investigation Team
2 participating in the investigation of the Upper Big
3 Branch Mine explosion shall keep confidential all
4 information that's gathered from each witness who
5 voluntarily provides a statement until the witness
6 statements are officially released. MSHA and the
7 State of West Virginia shall keep this information
8 confidential so that other ongoing enforcement
9 activities are not prejudiced or jeopardized by a
10 premature release of information. This
11 confidentiality requirement shall not preclude
12 investigation team members from sharing information
13 with each other or with other law enforcement
14 officials. Your participation in this interview
15 constitutes your agreement to keep this information
16 confidential.

17 Government investigators and specialists
18 have been assigned to investigate the conditions,
19 events and circumstances surrounding the fatalities
20 that occurred at the Upper Big Branch Mine-South on
21 April 5th, 2010. The investigation is being conducted
22 by MSHA under Section 103(a) of the Federal Mine
23 Safety and Health Act and the West Virginia Office of
24 Miners' Health, Safety and Training. We appreciate
25 your assistance in this investigation.

1 You may have your personal attorney
2 present during the taking of this statement, or
3 another personal representative if MSHA has permitted
4 it, and you may consult with your attorney or
5 representative at any time. For the record, do you
6 have a personal representative with you here today?

7 MR. MCALPINE:

8 No, just myself.

9 ATTORNEY BAXTER:

10 Your statement is completely voluntary.

11 You may refuse to answer any question and you may
12 terminate your interview at any time or request a
13 break at any time.

14 Your identity and the content of this
15 conversation will be made public at the conclusion of
16 the interview process and may be included in the
17 public report of the accident, unless you request that
18 your identity remain confidential or your information
19 would otherwise jeopardize a potential criminal
20 investigation. If you request us to keep your
21 identity confidential, we will do so to the extent
22 permitted by law. That means that if a judge orders
23 us to reveal your name or if another law requires us
24 to reveal your name or if we need to reveal your name
25 for other law enforcement purposes, we may do so.

1 We request that you refrain from
2 discussing your statement with others who may be
3 interviewed. Also, there may be a need to use the
4 information you provide to us or other information we
5 may ask you to provide in the future in other
6 investigations into and hearings about the explosion.
7 Do you understand or have any questions?

8 MR. MCALPINE:

9 Understand.

10 ATTORNEY BAXTER:

11 After the investigation is complete, MSHA
12 will issue a public report detailing the nature and
13 causes of the fatalities in the hope that greater
14 awareness about the causes of accidents can reduce
15 their occurrence in the future. Information obtained
16 through witness interviews is frequently included in
17 these reports. Since we will be interviewing other
18 individuals, we request that you not discuss your
19 testimony with any person aside from your personal
20 representative or counsel.

21 A court reporter will record your
22 interview. Please speak loudly and clearly. If you
23 do not understand a question asked, please ask us to
24 rephrase it. Please answer each question as fully as
25 you can, including any information you've learned from

1 someone else.

2 I'd like to thank you in advance for your

3 appearance here. We appreciate your assistance in

4 this investigation. Your cooperation is critical in

5 making the nation's mines safer.

6 After we have finished asking questions,

7 you'll have an opportunity to make a statement and

8 provide us with any other information that you believe

9 to be important. If at any time after the interview

10 you recall any additional information that you believe

11 might be useful, please contact Norman Page at the

12 telephone number or e-mail address provided to you.

13 Any statements given by miner witnesses

14 to MSHA are considered to be an exercise of statutory

15 rights and protected activity under Section 105(c) of

16 the Mine Act. If you believe any discharge,

17 discrimination or other adverse action is taken

18 against you as a result of your cooperation with this

19 investigation, you are encouraged to immediately

20 contact MSHA and file a complaint under Section 105(c)

21 of the Act.

22 MR. FARLEY:

23 On behalf of the West Virginia Office of

24 Miners' Health, Safety and Training, I'd also like to

25 advise you that the West Virginia Code, Chapter 22A

1 Article 1 Section 22 also protects miners against
2 possible discrimination that might result from
3 participating in this type of investigation and
4 interview session. I've just giving you some contact
5 information in case you should have any problems, ---

6 MR. MCALPINE:

7 Okay.

8 MR. FARLEY:

9 --- along with my business card and one
10 for Mr. Tucker here. He's our lead underground
11 investigator. And should you experience any problems,
12 you can give us a call. We would caution you that in
13 the event that you would file a claim, it has to be
14 done within 30 days of the event. Okay.

15 ATTORNEY BAXTER:

16 Please swear the witness in.

17 -----

18 KEVIN LEWIS MCALPINE, HAVING FIRST BEEN DULY SWORN,
19 TESTIFIED AS FOLLOWS:

20 -----

21 EXAMINATION

22 BY MR. SHERER:

23 Q. I want to thank you for coming down here this
24 afternoon, Mr. McAlpine. Are you on your way to work
25 or coming off shift?

1 A. No, actually I'm just wearing this to ---.

2 Q. Oh, okay.

3 A. Yeah. It's an old shirt.

4 Q. Okay. Would you please state your full name and
5 spell your last name?

6 A. Yeah, Kevin Lewis McAlpine. Last name's

7 M-C-A-L-P-I-N-E.

8 Q. What's your home address and telephone number,
9 please?

10 A. It's [REDACTED]

11 [REDACTED] Phone number's [REDACTED]

12 Q. Okay. Are you appearing here today voluntarily?

13 A. Yes.

14 Q. How many years of mining experience do you have?

15 A. I have almost two years, not --- just a few months
16 from being two years.

17 Q. Okay. What has that experience included? Have
18 you worked at different mines?

19 A. Well, right now Ellis Eagle, the one I'm at now,
20 is the third mines I've been at.

21 Q. Okay.

22 A. I've basically been on the belt move crew,
23 midnight shift about my whole entire time I've been
24 there. That's basically almost about all I've done.

25 Q. Okay. So you say your third mine is Ellis Eagle.

1 I assume UBB was the second mine?

2 A. Second, yes, sir.

3 Q. Where'd you start at?

4 A. Parker Peerless.

5 Q. Okay. And all three of those are Massey
6 operations?

7 A. Yes, sir.

8 Q. Okay. Do you have any State or Federal mining
9 certifications?

10 A. No.

11 Q. Okay. Do you remember your first day at UBB?
12 What did you do that day?

13 A. Well, when we went in, they took us through the
14 intake, the primary escapeway and everywhere and
15 showed us all the escapeways, and they took us then on
16 our section, on Four section, that's where I was at,
17 the barrier section, and showed us around up there and
18 showed us where everything was at and basically went
19 down there and just started going to work ---

20 Q. Okay.

21 A. --- down there.

22 Q. Did you go to the longwall the first day?

23 A. No, sir, I was never on the longwall.

24 Q. Okay.

25 A. None.

1 Q. Any other sections beside the Four section?

2 A. I did go on the Ellis side to Three section, and I
3 was there for about a month. They put me on the motor
4 crew on the evening shift, and I went down towards
5 where the longwall was at, but I never went where you
6 --- the switch where you go down through there. I
7 never went --- was able to go down through there.
8 They never took us down there. We just went down
9 there to recover some structure for the belt move and
10 different things like that.

11 Q. Okay. You say you worked the third shift or the
12 midnight shift?

13 A. Yes, sir.

14 Q. When did you start at UBB, do you recall?
15 Roughly.

16 A. Roughly? Probably around --- it was probably
17 February. Probably, like, early February.

18 Q. And you worked there until the time of the
19 explosion?

20 A. Yes, sir.

21 Q. And then you moved to Peerless Eagle?

22 A. Ellis Eagle.

23 Q. Ellis Eagle.

24 A. Yes, sir.

25 Q. Excuse me. Okay. And you say you primarily

1 worked on a belt move crew. Did you move anything
2 besides the belts?

3 A. Basically we moved, you know, power. And when we
4 did a belt move, we moved the power and all the belt,
5 things like that. We basically just did things around
6 there, cleanup, shoveling the beltline and basic
7 things like that.

8 Q. Okay. When you moved the belts, did you have to
9 set the belt heads and all that sort of stuff?

10 A. Well, now, on the head they basically did all ---
11 the electricians and things, they built the belt heads
12 and things like that. We just moved the feeder and
13 the tailpiece, you know, added structure and things
14 like that to it.

15 Q. Oh, all the hard work?

16 A. Yeah, basically. It was a little rougher there
17 for a little while. We had to --- for part of the way
18 they had us put in the structure they had for the
19 longwall, had us put that in there, because they had
20 the big long belt there. Then, the further down we
21 went we had the smaller structure.

22 Q. Is that, what, six-foot belt?

23 A. Yeah. It was heavy. It was heavy.

24 Q. How many people were on that crew there?

25 A. Well, at the time of the explosion there was me

1 and two red hats and our boss.

2 Q. And you guys could keep up with all the section
3 moves?

4 A. Yes, sir.

5 Q. Did you have to hustle to keep up with the section
6 moves?

7 A. We had --- on belt move, yeah, believe it or not,
8 we had to hustle.

9 Q. Okay.

10 A. Yeah, they pretty much wanted us to keep up with
11 them.

12 Q. How often would you move up?

13 A. Probably about --- it was about twice a week,
14 usually about every three days.

15 Q. Okay. And then when you worked moving the section
16 or the belt up, say you just did general belt type
17 maintenance?

18 A. Yeah, we do, like, splices on the belt and just
19 shovel the beltline, dust the beltline. We would send
20 out, like, tool sleds and things like that. We'd move
21 them up, things like that.

22 Q. Sure. How often would you dust those belts?

23 A. Actually, they'd want us to dust it every night.

24 Q. Okay. How many entries were connected with the
25 entry was there, do you know?

1 A. How many entries was connected to it? I believe
2 there were --- I believe at the time they had seven.

3 Q. Seven?

4 A. I believe.

5 Q. Did you ever get over into those furlough entries?

6 A. Into what?

7 Q. Into those entries that were connected to the
8 belt?

9 A. We didn't go up on the actual main section very
10 much.

11 Q. Okay.

12 A. Yeah, we didn't go very much up there. We
13 just ---.

14 Q. Did you ever just walk over a few crosscuts and
15 see what was going on?

16 A. Well, every once in a while we would go over there
17 and we'd have to get some trash, pick up trash and
18 stuff off the section, but other than that, that's all
19 we did.

20 Q. How about those other entries or --- how was the
21 dust in those?

22 A. You mean like coal dust or ---?

23 Q. Yeah, uh-huh (yes).

24 A. Well, at the time on the midnight shift there
25 really wasn't a whole lot of dust on there.

1 Q. Okay.

2 A. I guess probably because, you know, they wasn't
3 fully running the equipment and things like that,
4 but ---.

5 Q. Sure.

6 A. I mean, I could breathe fine and everything.

7 Q. Did you ever get over in the return from the
8 section?

9 A. Yeah.

10 Q. What did that look like?

11 A. It looked like it had been taken care of. They
12 had been dusting things and it looked like it was
13 taken care of.

14 Q. Okay.

15 A. And I could feel, you know, pretty decent air flow
16 through there.

17 Q. Okay. Who was your supervisor?

18 A. My immediate one was Joe Coon. He was my boss.

19 Q. Okay. Do you know who Joe reported to?

20 A. Gary. I can't remember his last name.

21 Q. Gary May?

22 A. Gary May, Gary May.

23 Q. Okay. We understand that the mine was down for
24 Easter Sunday. Do you recall what was the last shift
25 you worked prior to the explosion?

1 A. The midnight shift.

2 Q. Okay. So you were there on the shift before the
3 explosion?

4 A. Yeah, we left --- best of my knowledge, we left
5 out of the mines about --- it was a little ---
6 probably a little bit after 8:00.

7 Q. Do you recall hearing anything or possibly seeing
8 or even smelling anything unusual the shift prior to
9 that explosion?

10 A. No, sir, not to my knowledge. I don't remember.

11 Q. Do you remember hearing anything on the mine phone
12 or anything?

13 A. No, sir.

14 Q. Do you know if there was any problems at that
15 particular shift? Did you hear anything even after
16 you got out of the mine?

17 A. No, sir. I didn't hear anything that was abnormal
18 or anything ---

19 Q. Okay.

20 A. --- that don't, you know, usually goes on around
21 there.

22 Q. Sure. What was the first thing that went through
23 your mind when you heard there was an explosion?

24 A. I had a lot of emotions going through ---. At
25 first, when I first heard about it, I didn't know it

1 was in UBB. I didn't know it was --- you know. And
2 then I called down there and talked to --- I'm not
3 sure exactly who it was that answered the phone. But
4 they said that yeah, the explosion had happened --- it
5 happened there, but they wasn't at liberty to give out
6 any information.

7 Q. Sure.

8 A. And they said they believed it may have happened
9 on the longwall, but they don't know for sure.

10 Q. Okay. And about when did you call down to the
11 mine?

12 A. I had been asleep. It was probably about a little
13 after three o'clock in the afternoon.

14 Q. Okay. So after, say, 3:15?

15 A. Actually it was probably closer to 4:00. It was
16 probably --- yeah. Because I remember I fell asleep
17 and they said --- I think it was something until 4:00.

18 Q. Okay.

19 A. Yeah.

20 Q. So they said there had been an explosion. How did
21 you hear about the explosion?

22 A. One of my aunts, her husband works in the mine, as
23 well, and they had heard about one. They said some
24 people --- I guess it got spread around that --- where
25 it happened.

1 Q. Okay. So she gave you a call?

2 A. And they knew --- they had knew that I worked
3 there and they wanted to make sure that I didn't stay
4 over or wasn't there at the time.

5 Q. Sure. You said you started in February. Had you
6 gotten to know many of the people working at UBB?

7 A. Most of the ones I knew was basically the ones I
8 worked with on nightshift, and everyone that I met and
9 everything was real nice.

10 Q. Sure.

11 A. I mean, I loved working there.

12 Q. Okay, good.

13 A. I mean, I loved it. I loved the people I worked
14 with and everything.

15 Q. Do you know if there had been any problem with
16 ventilation in that mine?

17 A. Well, at one time --- I don't know the exact date,
18 but we was at work. It was when I was on the --- when
19 they put me on that month for the motor crew. And we
20 was sitting outside. We had loaded up and everything
21 and they said that they wasn't going to be able to
22 allow us to work until they had to redo the
23 ventilation.

24 And the way I understood it, they had to take ---

25 redo the whole ventilation system. So they said ---

1 they paid us for our time being there and they told us
2 we could go home, and we came back the next day and
3 they let us work, so for that whole day they didn't
4 let us work, because they had to redo the ventilation.

5 Q. Do you recall about when that was?

6 A. I know they moved me back to the midnight shift
7 exactly about a week before the explosion happened, so
8 I don't know the exact time. It had to been probably
9 at least a few weeks --- a few weeks before the
10 explosion happened.

11 Q. Okay. When you were on the section or even outby,
12 did you ever notice the air changing, the airflow slow
13 down or speed up or ---?

14 A. No. I mean, on Four section, the only thing I
15 really noticed was it was warmer up there than what it
16 was, like, on Three section. It seemed like they had
17 more air there.

18 Q. Uh-huh (yes).

19 A. But it seemed like on Four section, you got there,
20 it was warmer. I mean, that's basically about it.

21 Q. Okay. Do you know if they had enough air all the
22 time on Four section?

23 A. Yeah. I mean, we had no problems breathing or
24 anything. It seemed like very thing was fine. Just
25 the only thing, it just --- I don't know, it just

1 seemed like it was warmer. That was the only thing.

2 Q. Okay. Did you notice, had the temperature changed
3 while you were on the section or is it just you notice
4 that when you came from the Three section?

5 A. Well, I guess probably I noticed it when I came
6 from the Three section, because when we was on the
7 motor crew, you go to the One section and unload
8 supplies, and then when you come onto the other one,
9 it seemed like it was --- you could tell the coolness.
10 And then as you come over there on Four section it was
11 a little bit warmer.

12 Q. Sure.

13 A. Like the air wasn't kind of stirring around as
14 much.

15 Q. Okay. Do you recall the few days before the
16 explosion any change in temperature or was it
17 relatively constant?

18 A. It was constant.

19 Q. Okay.

20 A. Pretty much.

21 Q. Okay. When did you transfer from the Three
22 section to the Four section?

23 A. Well, it was about --- actually it was about a
24 week before the explosion happened, because that's
25 when they took me off the motor crew because they told

1 us they was doing a new alignment. They sent a lot of
2 people to Parker. And then they put ---. They said
3 they was doing away with the evening shift motor crew
4 so they put us on whatever we was at, and they ---.
5 At the time I was --- they put me back with Joe Coon
6 because I was the only black hat that he had down
7 there.

8 Q. Sure.

9 A. And he needed someone down there that could run
10 equipment.

11 Q. Uh-huh (yes), sure. You say there was a lot of
12 changes about a week --- in personnel about a week
13 before the explosion?

14 A. Yes, sir.

15 Q. What about some of the other crews like ---? Was
16 there a crew that just did rock dust?

17 A. Well, they did have a --- on the motor crew I know
18 ---. Before they put me on the motor crew they had
19 --- they would put a duster on the back of the motor
20 and they would just go all the way down the track and
21 just throw dust and things like that.

22 Q. Sure.

23 A. But they basically --- for the sections they would
24 have either the --- you know, either the production
25 crew ---. You know how they dust the section with the

1 scoop ---

2 Q. Sure.

3 A. --- where they would take --- have us do, the
4 scoop --- do the beltline all the way from the feeder
5 all the way up to the head and dust the whole
6 beltline.

7 Q. Uh-huh (yes). How would you dust the beltline?

8 A. We'd either --- we have a band duster, or if it
9 --- for some reason if it wouldn't work, we had gotten
10 messed up, we would take a hand duster and just take
11 it and throw it. There was three of us that would do
12 that.

13 Q. Were there any trickle dusters on those belts?

14 A. Yes, sir.

15 Q. Where were those at?

16 A. Well, I know --- I don't exactly. Like I said, I
17 wasn't too familiar with the mines exactly, but I
18 remember seeing one on Three section. There was.
19 Now, on --- I can't really --- I can't really say
20 where there was one at down towards Four section.

21 Q. Okay.

22 A. Of course on down past there I really --- I only
23 went down there, like, one time to get the structure.
24 I really don't know if there were any down there or
25 not.

1 Q. Sure, uh-huh (yes). Okay. You mentioned there
2 was a duster they'd hook up to the motor and dust the
3 track entries. Do you recall who would run that
4 duster?

5 A. No, sir. They would just have different guys.
6 They would have --- some motors would go down towards
7 the longwall. Some motors would go down the other
8 way. They would have just different ones do it.

9 Q. Okay. Was it just on the midnight shift that they
10 did that or was there some other schedule?

11 A. I think they did ---. I know on the midnight
12 shift they did do it, but on the --- I'm not really
13 sure if they did it on the dayshift or not ---

14 Q. Okay.

15 A. --- to be honest with you.

16 Q. Where did they get their dust from for that
17 particular duster? Was there a bulk tank or ---?

18 A. They had bulk dust delivered in and in huge bags
19 and they would take the I.T. outside and, you know,
20 dump it in there on the tracks outside.

21 Q. Okay. So there wasn't, like, a rock dust borehole
22 or anything like that that you're aware of?

23 A. No, they did have every few, like, breaks that
24 you'd go down. It would probably be, like, every ---
25 between every five to ten. Depends on how many they

1 had. Like, on the side they had some rock dust set
2 off ---

3 Q. Okay.

4 A. --- and everything. They did have rock dust set
5 off different areas of the mines.

6 Q. Sure.

7 ATTORNEY BAXTER:

8 Sorry. I'm going to have to excuse
9 myself.

10 A. That's okay.

11 ATTORNEY BAXTER:

12 But thanks for coming in for the
13 interview.

14 A. Okay. Thank you, sir.

15 ATTORNEY BABINGTON:

16 Hi. My name's Matt Babington. I'm going
17 to take Derek's place for the rest of the interview.

18 A. Okay. My name's Kevin McAlpine.

19 ATTORNEY BABINGTON:

20 Good to meet you.

21 A. Good to meet you, too.

22 BY MR. SHERER:

23 Q. Did you ever hear anybody complain about
24 ventilation in that mine?

25 A. No, not really, not personally.

1 Q. Did you ever hear anybody say something like
2 there's just no air up on 22 Headgate?

3 A. No, sir.

4 Q. Did you go through any equipment doors in that
5 mine?

6 A. You mean like the double doors, the ---

7 Q. Yeah.

8 A. --- mechanical? Yeah, every time we'd go down
9 towards Four section there was two sets of them right
10 there we had to go through.

11 Q. Okay. Did you ever go through the doors up near
12 the 78 Break?

13 A. Oh, you mean on past the Four section? Yeah, that
14 one time we went up there to --- with the motor to get
15 structure, we had to go through those.

16 Q. Okay. What were those like? Do you recall?

17 A. They wasn't motorized or anything. They didn't
18 have any --- you had to open them by hand and
19 everything. And they seemed like they was --- one
20 time they had replaced one and you had --- sometimes
21 you would have to lift up on it and have to pull it
22 open.

23 Q. Okay.

24 A. I mean, but other than that, they seemed like they
25 was in good shape.

1 Q. Okay. Did you notice any leakage?

2 A. You mean to the doors?

3 Q. Yeah.

4 A. No, sir. They had it pretty well sealed off.

5 Q. What about the other doors? When you opened one,
6 one of the set of the doors, did you notice any
7 whistling or anything like that?

8 A. No, just, like, if you would open both doors you
9 could hear the air rushing through.

10 Q. Okay.

11 A. Sometimes we would have to open the doors because
12 the motor --- they have stuff hooked onto the motor
13 and you'd have to open both sets of doors and let it
14 come through.

15 Q. Okay. Did you ever come up to any of those doors
16 and find more than one of them open?

17 A. No, it was always closed when we came to them.

18 Q. Okay. Did you ever see any ropes or changes on
19 those doors to help hold them closed?

20 A. No, sir.

21 Q. You worked the midnight shift immediately prior to
22 the explosion. What shifts did you work immediately
23 prior to that? Did you work Friday?

24 A. You mean after the explosion?

25 Q. No, before the explosion.

1 A. Oh, before the explosion? Yeah, we worked, like,
2 Monday through Saturday.

3 Q. Okay. So did you work midnight on Saturday?

4 A. No. Midnight shift on Saturday? No. Or Sunday?
5 No.

6 Q. Okay. You were on the midnight on Friday?

7 A. Yeah, Friday night.

8 Q. Anything unusual happen on Friday? Do you recall?

9 A. No, everything seemed normal, like it was every
10 day when we went there.

11 Q. Anybody mention ventilation changes on Friday?

12 A. No, sir.

13 Q. Okay. Anybody mention anything about ventilation
14 changes over the weekend to you?

15 A. NO, sir.

16 Q. Okay. You ever heard of any problem with methane
17 outbursts or inundations at this mine?

18 A. No, sir.

19 Q. You hear of any problems with the longwall for,
20 say, a week before the explosion?

21 A. No.

22 Q. Just even in passing?

23 A. No, sir. I knew one guy. I grew up with him. He
24 was an electrician on the longwall and him and a
25 couple other guys, you know, and we'd come out and get

1 changed. You know, he'd talk to me. Had never said
2 anything to me about anything being wrong or anything
3 up there.

4 Q. Okay. Where did you portal, the UBB portal?

5 A. Yes, sir.

6 Q. So you were at the mine, what, about two months?

7 A. Yeah, almost three months.

8 Q. Okay. Three months. Did you feel safe?

9 A. Yes, sir.

10 Q. Okay. Did you think that the management was doing
11 all they needed to do to keep the mine safe?

12 A. Yes.

13 Q. What about the examinations, you know, the
14 foremen's books, did you ever, ever hear of them
15 talking about anything associated to that?

16 A. No, sir.

17 Q. Okay. Did you ever report a hazard on anywhere
18 you worked in this mine?

19 A. No, sir, not personally.

20 Q. Okay. Did you ever tell your boss something like,
21 we need to pump water or we need to put up some
22 timbers or anything like that?

23 A. There may've been, like, some ribs that was kind
24 of falling in. You know, I would tell them, say look,
25 you know, right here needs to have a timber put up.

1 Q. Okay.

2 A. And it was just like down --- we wasn't very far
3 down from where --- it was like a pretty big hill
4 going down. We just had started that new cut down
5 through there, and most of the rib had started getting
6 pretty weak over there and a big rock hanging over it,
7 so ---. Other than that, it wasn't nothing.

8 Q. Okay. Did they put the timber up?

9 A. Yes, sir.

10 Q. Okay, good. What about the general conditions of
11 the barrier section? Was the roof and --- you said
12 the ribs were bad, but was the roof okay?

13 A. Yeah. It seemed, seemed pretty good.

14 Q. How about the floor, was there any floor heave
15 that you know of?

16 A. No, sir.

17 Q. So they had plenty of air. You said the dust was
18 in good shape. Do you know how the coal production
19 was or was they running a lot of coal on that section?

20 A. Not as much as they wanted to.

21 Q. Well, they never do that.

22 Q. They would hit a lot of rock and stuff. I've
23 heard them complain about saying they needed to run
24 more coal ---

25 Q. Okay.

1 A. --- and things like that.

2 Q. Do you recall who mentioned they needed to run
3 more coal?

4 A. I've heard, you know, just varied. Joe would say
5 they needed to run more --- just different people. I
6 don't know, you know, all the names and things, but
7 some of the bosses from dayshift and things like that
8 would say that. They would actually kind of --- some
9 of it would be like a competition, you know what I
10 mean? Like what section could run more coal and
11 things like that.

12 Q. Oh, yeah, yeah. What about the mine in general?
13 Was there a lot of pressure to run coal?

14 A. Not an extreme amount of pressure. Just, you
15 know, just basically they had a limit they had to
16 meet, I guess, and ---

17 Q. Okay.

18 A. --- they had to, you know, try to run it.

19 Q. Did you ever hear people say something like we've
20 got to get more coal because we've got a train coming
21 in tomorrow night or something like that?

22 A. No.

23 Q. Okay. Did you ever wear a dust pump at this mine?

24 A. Did I ever wear one?

25 Q. Uh-huh (yes).

1 A. No.

2 Q. Okay. Did you ever see anybody on the section
3 wear one?

4 A. No.

5 Q. Do you know if anybody in the mine ever was told
6 that there were inspectors on the property, either
7 State or Federal?

8 A. Was we ever told that?

9 A. Yeah.

10 Q. They would say that there was --- well, like, at
11 the beginning of the shift they would say, well,
12 there's supposed to be an inspector coming and stuff
13 and just be sure everything's in check.

14 Q. Okay. Supposed to be. You ever hear of people on
15 the mine phone saying we've got company or there's an
16 inspector on the property?

17 A. No, I haven't heard nobody on the mine phone say
18 that.

19 Q. Okay. Do you think the ventilation in the entire
20 mine was adequate at all times?

21 A. I believe it was except for that one time that
22 where they closed it down for that day and didn't let
23 us work.

24 Q. Okay. Are you aware of ventilation changes ever
25 being made when the miners were underground?

1 A. No. Now, I mean, just --- you know, I guess just
2 basically having to put up a curtain here and there.
3 Other than that ---.

4 Q. You ever hear of anybody trying to mine coal at
5 this mine without ventilation curtains in place?

6 A. Not to my knowledge.

7 Q. How about pulling back from the miner?

8 A. No.

9 Q. Okay. Did you ever hear of anybody tampering with
10 the methane monitors, either bridging them out or
11 putting bags over the sensors or anything that would
12 interfere with their function?

13 A. No, sir.

14 Q. Were miners ever subjected to threats or
15 retaliation for reporting safety issues or other
16 concerns that you're aware of?

17 A. No, sir.

18 Q. Okay. Do you have any idea what could have caused
19 this explosion?

20 A. No. I mean, everybody has a theory, theories and
21 things like that, but I really don't know of anything
22 that would have.

23 Q. Okay. What's the best theory you've heard?

24 A. Just some people say that, you know, could've been
25 some, like, a pocket of gas up there and towards the

1 longwall and rock or something had hit something and
2 caused a spark or a piece of equipment may have been
3 --- that somebody was running a piece of equipment up
4 there and caused a spark some way or something.

5 Q. Okay.

6 A. I just don't really think that ---. A lot of
7 people say there's a --- well, the mantrip caused a
8 spark, but I don't believe it was a mantrip that did
9 that.

10 Q. Have you ever seen a spark associated with a
11 mantrip?

12 A. No.

13 Q. Did you ever hear of pockets of gas anywhere?

14 A. No.

15 Q. Okay. Is there anything you --- or anybody you
16 would suggest that we look into to try and determine
17 what happened at this mine, anybody we should talk to?

18 A. Not that I'm aware of, you know. The only thing I
19 can really say would be the bosses and things like
20 that. I really --- and the fire bosses. I really, I
21 really don't know a whole lot of stuff about it
22 myself. No one, no one person in particular that I
23 can think of that would be able to, you know, help me
24 think.

25 MR. SHERER:

1 Okay, okay. Thank you. That's all I
2 have.

3 EXAMINATION

4 BY MR. FARLEY:

5 Q. I've got a couple. Just make sure I've got you
6 right.

7 A. Okay.

8 Q. You first showed up at UBB in February this year?

9 A. Yes, sir.

10 Q. And you haven't worked there since April 5th, so
11 you spent no more than two months there?

12 A. Right.

13 Q. Is that about right? Now, after the explosion,
14 you got a call from a relative and you called the mine
15 before 4:00 p.m.?

16 A. I believe it was. I'm not exactly sure, but I'm
17 thinking it was. Like I said, I was half asleep when
18 I did that and everything. I just had woke up.

19 Q. Before 4:00 or maybe a little after 4:00?

20 A. It may've been. Yes, sir. I was thinking it was
21 close to, close to 4:00 or something like that.

22 Q. Was it still daylight?

23 A. Yes, sir. Yeah, it was definitely daylight.

24 Q. Okay. And you said you couldn't recall who you
25 spoke to on the phone?

1 A. When I called the mines? No, they didn't say who
2 --- what the name was.

3 Q. Okay. Who usually answers the phone when you call
4 there?

5 A. They have a outside person out there, but
6 sometimes when you call it don't --- they don't
7 automatically pick up. It's just whoever answers the
8 phone.

9 Q. Okay. And they told you that there had been an
10 explosion and they thought it might've occurred on the
11 longwall?

12 A. Yes, sir. I said --- because I asked them. I
13 said well, I said, do you know what happened? And I
14 was asking questions. They said they're not really at
15 liberty to say. He said, but ---. I said, well, I
16 work on the barrier section. I said, do you think it
17 happened there? And they said, no. He said, we
18 believe it might've happened on the longwall.

19 Q. Okay. Any --- did he offer any reasons as to why
20 they believed that?

21 A. No, sir.

22 Q. Okay. That's important and here's why. Now,
23 since April 5th we've heard a lot of people tell us
24 that there's been an explosion, but I'm not sure how
25 many people were telling us that at around four

1 o'clock on April 5th, and ---.

2 A. Well, I don't know exactly. I mean ---.

3 Q. If at any time, you know, later or after this
4 interview your memory clicks --- sometimes things come
5 back to you. If your memory clears up ---

6 A. Yeah.

7 Q. --- on that, would you get back with us ---?

8 A. Yes, sir. Well, see, the reason --- I mean, I
9 just --- I don't want to lie and say I don't know, you
10 know, if it was this time, that time. I know it was
11 around --- I think it was around after 4:00, but like
12 I said, I knew one guy that had died there. And you
13 know, and we didn't know exactly who it was and
14 everything. And Robert Clark --- and I grew up with
15 his wife and everything and he was at work at the
16 time. And I knew not all of them. I knew a couple of
17 them that was there and I was trying to call around
18 and find out, you know, the guys I knew who worked
19 there. And that was just basically, you know, just
20 all the emotions and things going on.

21 Q. Sure.

22 A. I really --- I really couldn't tell you exactly
23 what time it was that I called, but ---.

24 Q. Okay. What time would you --- I guess if you
25 worked the midnight shift, did you routinely go home

1 and go to sleep as soon as possible or did you wait?

2 A. Well, I would try to, but sometimes it was kind of
3 hard, hard to sleep during the day. And sometimes I
4 wouldn't fall asleep until 11:00 or 12:00 sometimes
5 when I'd get home. It would take me about an hour to
6 drive home.

7 Q. Okay. Well, on a good day if everything's working
8 right, what time did you routinely wake up?

9 A. Wake up?

10 Q. Yes.

11 A. Well, usually --- usually it was usually in the
12 evening, because I remember getting the phone call.
13 And my mom called and said that --- well, my aunt
14 called her, told her that, you know, it had happened.

15 Q. Uh-huh (yes).

16 A. And then she called and asked me if I, you know,
17 I'm all right. And I had all these people asking me
18 if I was all right, and I said yeah, sure. Usually in
19 the evening around 5:00 or 6:00.

20 Q. Okay. So the call came before you normally get
21 up?

22 A. Normally, yeah. Because I remember I was still in
23 bed asleep. I remember I was kind of --- before I
24 knew about the phone call, I was aggravated.

25 Q. Sure. All right. If anything about that phone

1 conversation you had with that person in the mine
2 comes back to you, please give us a call and share it
3 with us.

4 A. Okay. Well, I'm sorry that I can't tell you
5 the ---

6 Q. That's all right. I mean ---.

7 A. --- exact time. I mean, I'm sure it was probably
8 before four o'clock, because like I said, y'all didn't
9 even know nothing about it. Well ---.

10 Q. We're trying to piece together some things ---

11 A. Yeah.

12 Q. --- about how things went down there, and it's not
13 about nailing anybody. It's about ---

14 A. Yeah.

15 Q. --- just acquiring all the information.

16 A. Yeah.

17 MR. FARLEY:

18 All right.

19 EXAMINATION

20 BY MS. SPENCE:

21 Q. Did you go to the mine?

22 A. No, I asked if there was anything I could do.
23 They said, no, they're not allowing anyone down there.
24 I didn't get to go down there.

25 Q. Did you talk to Massey lawyers?

1 A. I talked to them. It has been probably about a
2 month ago.

3 Q. One interview?

4 A. Yeah, one.

5 Q. And help me with when you worked on --- you worked
6 on second shift for a while?

7 A. Yeah, evening shift for --- it was about a
8 month ---.

9 Q. About a month? And you had gone back to midnight
10 the week, approximately the week ---

11 A. Yeah.

12 Q. --- before the explosion?

13 A. It was back almost exactly a week before, before
14 the explosion happened.

15 MS. SPENCE:

16 Thank you. That's all I have.

17 EXAMINATION

18 BY ATTORNEY BABINGTON:

19 Q. Did the Massey attorneys give you any instructions
20 about how to participate with MSHA or the State when
21 this interview came about?

22 A. Oh, they just said to cooperate and just that's
23 the only thing I know. They basically said, just, you
24 know, to cooperate and not --- if I know anything, not
25 to hide anything.

1 ATTORNEY BABINGTON:

2 Let's take a quick two minutes to get
3 some follow-ups. Let's go off the record.

4 OFF RECORD DISCUSSION

5 ATTORNEY BABINGTON:

6 Okay. Let's go back on the record.

7 Erik, you had a couple and then Terry, you have a few.

8 MR. SHERER:

9 Yes, sir.

10 RE-EXAMINATION

11 BY MR. SHERER:

12 Q. What training did you receive on the motor? Do
13 you recall?

14 A. What training? Oh, well, I had run a motor before
15 at Parker ---

16 Q. Okay.

17 A. --- and I knew basically how to do --- they showed
18 me how to do it. They had me do a ---. The guy I had
19 worked with over there, I was with him, and basically
20 I was his helper, but and he was the one that mainly
21 drove the motor, but basically showed me where all the
22 fire suppression system was at and the breaks and how
23 to start it and everything like that.

24 Q. You mentioned there was layoffs or realignments
25 about a week before the explosion.

1 A. Uh-huh (yes).

2 Q. Do you recall, roughly, how many people were
3 involved in that, how many people they cut back?

4 A. No, sir. I don't know. They had it on a piece of
5 paper when we come outside one day after the shift.
6 They had some paper with a list of names on it. I
7 don't know exactly how many was on there.

8 Q. Okay. So there was some number of people. Were
9 they moved to --- back to another mine or were they
10 laid off? Do you recall?

11 A. Yeah. Some of them --- I know some of them when
12 to Parker and some of the others went to some other
13 mines. I'm not exactly sure. But then some others,
14 they just moved back, like me. I just --- they put me
15 back where I was at with Joe Coon.

16 Q. Okay. Were there any roof cracks on the barrier
17 section?

18 A. Roof cracks. No, just ---.

19 Q. Okay. How about rolls in the floor? Was the
20 floor fairly even and level or did it roll or go up
21 and down?

22 A. Well, it had hills and stuff where they cut it,
23 you know. I mean, it was basically pretty good.

24 Q. Okay.

25 A. Good flooring.

1 Q. You mentioned a big hill. What was that?

2 A. Oh, it's just when you came in to the barrier
3 section and you went down, there's like a --- they
4 had, like, cut down, I guess where they was going with
5 the seem, with the coal seem. It went downhill and it
6 just leveled off down there.

7 Q. Okay. How high was the coal on the barrier
8 section, do you recall?

9 A. It was high enough where you could stand up
10 straight. It was pretty --- that good.

11 Q. Good six, seven feet?

12 A. Yeah.

13 Q. Do you recall if there was a middleman or parting
14 in that coal seam?

15 A. A what?

16 Q. A middleman or parting, rock in the middle of the
17 coal seam?

18 A. No.

19 Q. Okay. It was all clean coal?

20 A. Yeah.

21 Q. Were they taking the top? Was there rock on
22 either side of the entry near the top?

23 A. There was a little bit of rock on it, yeah.

24 Q. Okay. How about the floor, did it look like they
25 had mined down in the floor?

1 A. No.

2 Q. Were you aware of any methane coming out of the
3 floor on the barrier section?

4 A. No, sir.

5 Q. Okay. And you mentioned they had some bad rib
6 conditions near the big hill. How were the ribs in
7 general on that section?

8 A. They was fairly good, just like at one spot there
9 it was just kind of like one bad rib right there.

10 MR. SHERER:

11 Okay. Thank you.

12 ATTORNEY BABINGTON:

13 Terry, could I have one quick one?

14 RE-EXAMINATION

15 BY ATTORNEY BABINGTON:

16 Q. one of the questions he asked you was about cracks
17 in the roof and you said, just, and then you trailed
18 off. I was just wondering what you were going to say
19 there.

20 A. Oh, it was just basic --- you know. You have,
21 like, rocks falling down, things like that. It wasn't
22 really no major cracks that I knew of in there, at
23 least on our section.

24 ATTORNEY BABINGTON:

25 Terry?

1 RE-EXAMINATION

2 BY MR. FARLEY:

3 Q. Just want to make sure I didn't misunderstand a
4 couple of things about where you work.

5 A. Uh-huh (yes).

6 Q. You know, if I understood you correctly, you never
7 visited the longwall section at UBB; is that correct?

8 A. No, sir.

9 Q. Okay. Now, you indicated you were on the motor
10 crew.

11 A. Uh-huh (yes).

12 Q. Now, when you were on this motor crew, did you
13 travel anywhere near the longwall?

14 A. We went up past 78 Break. Like, there was a --- I
15 don't know. I can't read the map very well myself,
16 but this right here?

17 Q. Seventy-eight (78) is right to your right there.

18 A. Up here?

19 Q. Seventy-eight's (78) right there.

20 A. Okay. Yeah. Now, they had to have the switch
21 that we go up and you go up toward, I guess towards
22 the longwall and everything. There was an old section
23 that they wasn't using. I believe it might've been up
24 through here.

25 Q. Well, would that have been on the tailgate side of

1 the longwall?

2 A. I know we had to go through --- I think there was
3 a couple sets of doors we had to go through.

4 Q. Oh. If you came to 78 and you were going to the
5 longwall headgate side, for example, you'd take this
6 path to the right, come up here and then turn left at
7 about 101.

8 A. That might've been where, because I remember ---.

9 Q. Or you know, or you could have traveled possibly
10 up the tailgate side to some extent, depending on
11 what's over --- was in the track over there.

12 A. Yeah. I mean, like, I wasn't real familiar with
13 the area because I had only, like, went up there,
14 like, one time to get structure and everything. And
15 we took the motor up there and I know I asked the guy
16 I was working with. He was driving the motor. I
17 said, well, where's that side go, and he ---. You
18 know, I'd get out and flip the switches and things and
19 he'd say, well, that, you go up that way, you go up
20 towards the longwall.

21 Q. Okay.

22 A. And then took off to the right. And then when
23 we'd go straight and then we'd go through a couple
24 sets of doors up there, and then you go around and
25 then ---. I really don't know exactly where it was

1 located at, where we went. He just took me up there
2 and he said it'd take probably about a good 45 minutes
3 to go up there, and it took a while for us to go up.
4 There was, like, 100-some. I think 100 --- the break
5 was 100 and some.

6 Q. Okay.

7 A. And there was an old beltline that was going
8 through there and they would --- we'd cut the belt and
9 go up there and take a structure down and just come
10 out. They were ready to --- outside and they'd take
11 it to whichever section they'd want to take it to.

12 Q. Okay. Now, but did you ever get anywhere near the
13 longwall belt? I guess if you didn't go to the
14 longwall, you didn't see the longwall belt, did you?

15 A. No.

16 Q. Okay, all right. Now, back on the phone call that
17 you made to the mine on April the 5th, do you recall
18 what number you called?

19 A. No, I can't remember offhand, but I may have it at
20 the house. I think I could try to get it.

21 Q. If you'd let us know, I'd appreciate that.

22 A. Okay.

23 Q. I mean, is it a number that rings directly into
24 the mine or does it go into a Performance Coal
25 operator? How did it work then?

1 A. I think it went up to one of the offices upstairs.
2 I'm not sure exactly. I just asked which number if,
3 like, if we had to call in or something like that,
4 which number do we call? And I said which number is
5 this? The UBB if we needed to call in for something.

6 Q. Okay.

7 A. And that's the number they gave me. They said,
8 well, call this number.

9 Q. Okay.

10 A. And I was like, okay.

11 Q. Is it possible you might've been talking to a
12 dispatcher?

13 A. It's possible. When I called they said, UBB. How
14 can I ---? I mean I guess with everything going they
15 was --- you know.

16 Q. Okay. Whenever you would call in if you were
17 going to be sick or late or something, who would ---
18 do you recall who might normally have answered?

19 A. He was the dispatcher, yeah, but I never really
20 called in sick or anything when I was there.

21 Q. All right. Okay. So you didn't recognize the
22 person that you called, who answered the phone?

23 A. Right. Yeah, they didn't say it was ---. When I
24 called, they said UBB. How can I help you?

25 MR. FARLEY:

1 Oh, okay.

2 ATTORNEY BABINGTON:

3 All right. On behalf of MSHA and the

4 Office of Miners' Health, Safety and Training, I want

5 to thank you for appearing and answering questions

6 today. Your cooperation is very important in the

7 investigation as we work to determine the cause of the

8 accident. We request that you not discuss your

9 testimony with any person aside from your personal

10 representative. After questioning other witnesses, we

11 may call you if we have any follow-up questions. If

12 at any time you have additional information regarding

13 the accident that you'd like to provide to us, please

14 contact us at the contact information previously

15 provided to you.

16 If you wish, you may now go back over any

17 answer you've given during this interview. You may

18 also make any statement that you would like to make at

19 this time.

20 A. No. I really don't have anything else.

21 ATTORNEY BABINGTON:

22 Okay. Well, again, I want to thank you

23 for your cooperation in this matter.

24 A. Okay. Thank you.

25 ATTORNEY BABINGTON:

1 Off the record.

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STATEMENT UNDER OATH CONCLUDED AT 2:00 P.M.

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

I, Alison Salyards, a Notary Public in and for the State of West Virginia, do hereby certify: That the witness whose testimony appears in the foregoing deposition, was duly sworn by me on said date and that the transcribed deposition of said witness is a true record of the testimony given by said witness; That the proceeding is herein recorded fully and accurately; That I am neither attorney nor counsel for, nor related to any of the parties to the action in which these depositions were taken, and further that I am not a relative of any attorney or counsel employed by the parties hereto, or financially interested in this action.



Alison Salyards