



**SARGENT'S
COURT
REPORTING**

Quality Work. Quality People.

Transcript of the Testimony of David McFalls, II

Date: June 11, 2010

Case:

Printed On: June 15, 2010

Sargent's Court Reporting Services, Inc.

Phone: 814-536-8908

Fax: 814-536-4968

Email: schedule@sargents.com

Internet: www.sargents.com

STATEMENT UNDER OATH
OF
DAVID MCFALLS, II

taken pursuant to Notice by Alicia R. Brant, 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 Friday, June 11, 2010, beginning at 3:19 p.m.

Any reproduction of this transcript is prohibited without authorization by the certifying agency.

A P P E A R A N C E S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MATTHEW N. BABINGTON, ESQUIRE
U.S. Department of Labor
Office of the Regional Solicitor
1100 Wilson Boulevard
22nd Floor West
Arlington, VA 22209

TERRY FARLEY
West Virginia Office of Miners' Health,
Safety and Training
1615 Washington Street East
Charleston, WV 25311

JOHN GODSEY
Mine Safety and Health Administration
P.O. Box 560
Norton, VA 24273

BETH SPENCE
West Virginia Independent Investigation

██████████
██████████

I N D E X

1		
2		
3	OPENING STATEMENT	
4	By Attorney Babington	5 - 10
5	STATEMENT	
6	By Mr. Farley	10
7	WITNESS: DAVID MCFALLS, II	
8	EXAMINATION	
9	By Mr. Godsey	10 - 30
10	EXAMINATION	
11	By Mr. Farley	30 - 34
12	EXAMINATION	
13	By Ms. Spence	34 - 35
14	RE-EXAMINATION	
15	By Mr. Godsey	35 - 37
16	RE-EXAMINATION	
17	By Mr. Farley	37
18	RE-EXAMINATION	
19	By Mr. Godsey	38 - 40
20	CLOSING STATEMENT	
21	By Attorney Babington	40 - 41
22	CERTIFICATE	42
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT PAGE

PAGE

NUMBER

DESCRIPTION

IDENTIFIED

NONE OFFERED

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ATTORNEY BABINGTON:

My name is Matt Babington. Today is June
10th?

MR. GODSEY:

11th.

ATTORNEY BABINGTON:

11th, sorry. Today is June 11th, 2010.

I'm with the Office of the Solicitor, U.S. Department
of Labor. With me is John Godsey, an accident
investigator with the Mine Safety and Health
Administration, an 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.

MS. SPENCE:

I'm Beth Spence with the Governor's
Independent Team.

MR. FARLEY:

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

ATTORNEY BABINGTON:

There are several members of the
investigation team also present in the room today.

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

20 Government investigators and specialists
21 have been assigned to investigate the conditions,
22 events and circumstances surrounding the fatalities
23 that occurred at the Upper Big Branch Mine-South on
24 April 5th, 2010. The investigation is being conducted
25 by MSHA under Section 103(a) of the Federal Mine

1 Safety and Health Act and the West Virginia Office of
2 Miners' Health, Safety and Training. We appreciate
3 your assistance in this investigation.

4 You may have your personal attorney
5 present during the taking of this statement or another
6 personal representative if MSHA has permitted it. You
7 may consult with your attorney or representative at
8 any time. Your statement is completely voluntary.
9 You may refuse to answer any question and you may
10 terminate your interview at any time or request a
11 break at any time. Also, this is not an adversarial
12 proceeding, and you may ask clarifying questions as
13 appropriate. For the record, do you have a personal
14 representative or legal representative with you today?

15 MR. MCFALLS:

16 No.

17 ATTORNEY BABINGTON:

18 Thank you. Your identity and the content
19 of this conversation will be made public at the
20 conclusion of the interview process and may be
21 included in a public report of the accident unless you
22 request that your identity remain confidential or your
23 information would otherwise jeopardize a potential
24 criminal investigation. If you request us to keep
25 your identity confidential, we will do so to the

1 extent permitted by law. That means that if a judge
2 orders us to reveal your name or if another law
3 requires us to reveal your name or if we need to
4 reveal your name for other law enforcement purposes,
5 we may do so. Also, there may be a need to use the
6 information you provide to us or other information we
7 may ask you to provide in the future in other
8 investigations into and hearings about the explosion.
9 Do you understand?

10 MR. MCFALLS:

11 Uh-huh (yes). Yeah.

12 ATTORNEY BABINGTON:

13 Do you have any questions?

14 MR. MCFALLS:

15 No.

16 ATTORNEY BABINGTON:

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

1 representative or counsel.

2 A court reporter will record your

3 interview. Please speak loudly and clearly. If you

4 do not understand a question asked, please ask the

5 interviewer to rephrase it. Please answer each

6 question as fully as you can, including any

7 information you've learned from someone else.

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

9 appearance here. We appreciate your assistance in

10 this investigation. Your cooperation is critical in

11 making the nation's mines safer.

12 After we've finished asking questions,

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

14 provide us with any other information you believe to

15 be important. If at any time after the interview you

16 recall any additional information that you believe

17 might be useful, please contact Norman Page at the

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

19 Finally, any statements given by miner

20 witnesses to MSHA are considered to be an exercise of

21 statutory rights and protected activity under Section

22 105(c) of the Mine Act. If you believe any discharge,

23 discrimination or other adverse action is taken

24 against you as a result of your cooperation with this

25 investigation, you're encouraged to immediately

1 contact MSHA and file a complaint under Section 105(c)
2 of the Act.

3 MR. FARLEY:

4 David, I want to advise you that the West
5 Virginia Coal Mine Health and Safety regulations also
6 protect miners against discrimination. And I'm going
7 to give you a memo here with some contact information
8 in the event that you should suffer any of this
9 treatment ---

10 MR. MCFALLS:

11 Okay.

12 MR. FARLEY:

13 --- along with my business card and a
14 business card for a guy named Bill Tucker, who's our
15 lead underground investigator.

16 MR. MCFALLS:

17 Okay.

18 -----

19 DAVID MCFALLS, II, HAVING FIRST BEEN DULY SWORN,

20 TESTIFIED AS FOLLOWS:

21 -----

22 EXAMINATION

23 BY MR. GODSEY:

24 Q. Okay. Thank you for coming today, Dave. What's
25 your full name, and spell your last name?

1 A. My full name is David Lee McFalls, M-C-F-A-L-L-S,
2 and I'm the second.

3 Q. Your home address?

4 A. [REDACTED]

5 Q. And your telephone number?

6 A. [REDACTED]

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

8 A. Yes.

9 Q. Okay. Has anyone made any promises to you for
10 giving a statement or offered you any rewards in
11 exchange for making your statement?

12 A. No.

13 Q. Has anyone threatened you or warned you not to
14 provide the statement?

15 A. No.

16 Q. Has anyone from the company or company
17 representative talk to you concerning the event on
18 April 5th?

19 A. No, not really.

20 Q. Well, what do you mean, not really?

21 A. Well, no, they ain't talked to me nothing about
22 it.

23 Q. Okay. How many years of mining experience do you
24 have?

25 A. Almost two. About a year and a half.

1 Q. Okay. Do you have any special training or any
2 certifications or ---?

3 A. No.

4 Q. Give us a brief description of your history,
5 working history.

6 A. I first started at Logan's Fork, Elk Run I worked
7 for them. And then about a year ago I got transferred
8 to UBB, where I worked until recently. And now I'm at
9 Round Bottom.

10 OFF RECORD DISCUSSION

11 A. Yeah.

12 BY MR. GODSEY:

13 Q. Is it Brown or Round?

14 A. Round.

15 Q. Oh, Brown; okay.

16 ATTORNEY BABINGTON:

17 Sorry. Brown, B-R-O-W-N?

18 A. Round.

19 MR. GODSEY:

20 Round.

21 ATTORNEY BABINGTON:

22 R-O-U-N-D.

23 BY MR. GODSEY:

24 Q. Round.

25 A. Yeah.

1 Q. Okay, good.

2 MR. FARLEY:

3 You mean Round Bottom; right?

4 A. Yeah, yeah.

5 BY MR. GODSEY:

6 Q. Okay. And you said you started when?

7 A. 2008, when I first started ---.

8 Q. At Round Bottom.

9 A. Oh.

10 Q. Round Bottom.

11 A. Round Bottom. It was ---

12 Q. Sorry about that. Go ahead.

13 A. --- two weeks after the accident.

14 Q. And what is your present job title?

15 A. Right now I'm on the move crew.

16 Q. Okay. The following questions now, they'll be all
17 for UBB ---

18 A. Okay.

19 Q. --- nothing about where you're working at Round
20 Bottom.

21 A. Okay.

22 Q. Okay. What was your first day of employment at
23 UBB?

24 A. I can't remember what, when I first started there.

25 Q. Do you remember the month?

1 A. It was March. It was the beginning of March.

2 Q. And you said you worked there how long?

3 A. A year.

4 Q. Okay. Until 2009?

5 A. Yeah.

6 Q. What was your first job assignment?

7 A. I was a dispatcher when I first started there.

8 Q. How long did you do that?

9 A. Probably four months.

10 Q. What all did you do as a dispatcher?

11 A. I just kept up with the track and COs and pretty
12 much cleaned the bath houses and the office. On
13 dayshift we'd take care of the warehouse, too.

14 Q. Did you have to send any reports to the big office
15 or anyone ---?

16 A. Yeah. Like when their production reports would
17 come out, we'd have to send them to Chris Blanchard
18 every morning.

19 Q. Did they all --- are you saying the only place you
20 sent them to is Chris Blanchard?

21 A. Yes.

22 Q. I'm going to ask you one more question about while
23 we're on it, inspectors. Did you ever notify
24 underground that there was a State or Federal
25 inspector on the property?

1 A. No.

2 Q. Do you know of any time that's ever happened?

3 A. Not that I know of.

4 Q. When you were the dispatcher, did any of the
5 section foremen or anything idle the section because
6 of a safety hazard or low air or something and
7 notified you and you notified the big office and they
8 told them to return to work?

9 A. No.

10 Q. What areas of the mine did you visit on the first
11 day of employment? What'd you do? What areas did you
12 visit?

13 A. Well, back then it was we was driving the first
14 longwall panel where they was at now. I can't
15 remember how far we was up in there, but that's where
16 I visited first.

17 Q. Okay. Did you ever work up there?

18 A. I moved belt up there one night, and that was it.

19 Q. Can you describe anything you saw, what you saw up
20 there?

21 A. It really --- I mean, it was normal. It just a
22 little bit wet. It wasn't bad, though.

23 Q. Okay. You don't remember how many times you been
24 up there or ---?

25 A. On that day then, when they was driving that, I

1 was up there only once.

2 Q. Okay. Do you know about where they were when
3 you ---?

4 A. I'm going to guess that they was probably
5 somewhere in this area.

6 Q. Okay.

7 ATTORNEY BABINGTON:

8 For the record, witness pointed to an
9 area around 75, 80 ---

10 MR. GODSEY:

11 Crosscut.

12 ATTORNEY BABINGTON:

13 --- Break on Headgate One North.

14 MR. GODSEY:

15 Right.

16 ATTORNEY BABINGTON:

17 And just to clarify, as well, you said
18 the first longwall panel?

19 A. Yeah.

20 ATTORNEY BABINGTON:

21 You're referring to the longwall panel
22 that they were working on ---

23 Q. Yeah.

24 ATTORNEY BABINGTON:

25 --- at the time of the accident?

1 A. Yeah, the present longwall panel.

2 ATTORNEY BABINGTON:

3 Present longwall, okay. Thank you.

4 BY MR. GODSEY:

5 Q. Do you remember how the roof or the ribs were up
6 there?

7 A. They was good when I was up there.

8 Q. Did you ever mention --- anybody ever mention to
9 you about finding methane or anything while they're
10 driving there?

11 A. No, not that I can remember.

12 Q. Okay. Where else did you visit at?

13 A. Two Section, down here when they were still down
14 here.

15 Q. And that is Tailgate One North?

16 A. Yeah.

17 Q. Okay. About where were they located when you were
18 up there?

19 A. I believe right in here.

20 Q. Toward the inby connector there for the ---?

21 A Yeah.

22 Q. Between the tailgate and the headgate?

23 A. Yeah.

24 Q. What did that area look like?

25 A. It was good.

1 Q. Okay. Did any water or ---?

2 A. No, it was dry then.

3 Q. Okay. What about the roof and ribs?

4 A. They looked good there, too.

5 Q. Okay. Is that all you remember about up there?

6 A. Yeah.

7 Q. Where else did you --- where else did you visit up
8 there?

9 A. That was it up there when I first started.

10 Q. Okay. Did you ever --- did they ever walk the
11 escapeway to show you?

12 A. Yeah. Yeah.

13 Q. Okay. Do you remember who accompanied you?

14 A. Homer Wallace. He was the superintendent at the
15 time.

16 Q. Excuse me. Did you receive any training prior to
17 being assigned at UBB?

18 A. No.

19 Q. You didn't receive any training at all?

20 A. Well, when I first started back, I did. I had to
21 go through a --- I can't remember what that's called
22 --- some training that Massey does. I can't remember
23 what it's called, though.

24 Q. MIT?

25 A. Yeah. That's what it was.

1 Q. Massey Initial Training?

2 A. Yeah, that's what it was.

3 Q. When was the last --- your annual refresher
4 training?

5 A. We had it just right before the accident, probably
6 three weeks, I'm going to say, before the accident.

7 Q. Have you worked on any of the active sections?

8 A. No. Like I said, I was outby, so I never ---.

9 Q. I mean, you never worked on the longwall,
10 tailgate ---

11 A. No.

12 Q. --- 22? No?

13 A. No.

14 Q. Okay. Had you ever go up there in the last six
15 months or year?

16 A. Yeah, we'd get up there and change rollers on the
17 longwall belt, but ---

18 Q. Okay.

19 A. --- I never went up to the ---.

20 Q. Face?

21 A. Yeah, I never went up to the face.

22 Q. What portal did you report to?

23 A. We went to the Ellis Portal.

24 Q. Okay. About what time did you start?

25 A. Our shift started 11:30 at night.

1 Q. Okay. And when you arrived there, who did you
2 report to?

3 A. Lacey Cox.

4 Q. And he was ---?

5 A. He was the crew leader over our outby crew.

6 Q. Was he a crew leader or supervisor or ---?

7 A. Yeah, he was the crew leader.

8 Q. Okay. Who was your supervisor?

9 A. Sean --- I can't remember his last name. He just
10 started there. Sean Walker. He was the midnight mine
11 foreman.

12 Q. Would he assigned --- was you all assigned where
13 you were going to work that night? Did they give you
14 a list of what you need ---

15 A. Yeah.

16 Q. --- to do, work list?

17 A. Yeah. They always left us a list outside, and
18 then we'd go take care of it.

19 Q. Did they ever give you more to do than you'd get
20 in a shift?

21 A. No.

22 Q. What are did you work on the last work shift you
23 --- when was the last shift you worked?

24 A. It was Friday evening. That Friday night was the
25 last shift I worked.

1 Q. You didn't come out Sunday night?

2 A. No. We was scheduled off that night.

3 Q. Okay. So you didn't work Monday shift?

4 A. No.

5 Q. Did you --- so you came in Ellis Portal ---

6 A. Uh-huh (yes).

7 Q. --- the last --- your last shift?

8 A. Yes.

9 Q. Did you notice anything different with ---
10 anything different that night, unusual?

11 A. No, it seemed normal to me.

12 Q. What did you do that night?

13 A. We was setting the flow-through on the Ellis Four
14 Belt.

15 Q. Whereabouts were you?

16 A. I can't remember the break, probably 25 Break
17 going in from the Ellis Portal.

18 Q. Did you notice the direction of air that night,
19 which way the belt air was traveling?

20 A. I can't remember. I believe it was pulling in.

21 Q. It was going inby?

22 A. Yeah.

23 Q. Do you work on those belts a lot? I mean, on the
24 longwall belts and ---?

25 A. Yeah. Yeah, it's mainly what we kept up with,

1 just the belts.

2 Q. Okay. How often --- do they clean, keep it clean?

3 A. Yes.

4 Q. How often do they rock dust?

5 A. Pretty frequently. I'd say probably two or three
6 times a week.

7 Q. Do they have a special crew for that?

8 A. Yeah. Yeah, on the hoot owl they had their own
9 rock dust crew, and that's what they done all night,
10 was just dust.

11 Q. Did they have a schedule, like, you know, we'll
12 rock dust so and so belt this night and the next ---?

13 A. I believe they --- I ain't for sure, but I believe
14 they left them a list outside, too, of where it ---
15 what needed to be rock dusted.

16 Q. Okay. Did you ever work alone?

17 A. No.

18 Q. You were never left alone while ---?

19 A. No, I've always had somebody with me.

20 Q. Were they provided with a methane monitor?

21 A. Yes.

22 Q. Who had it?

23 A. Lacey.

24 Q. And how did they take care of it? Did they take
25 it home with him?

1 A. I believe he left it at the mines. I'm not a
2 hundred percent on that.

3 Q. Are you qualified to take a gas check?

4 A. I've been trained to do it.

5 Q. Okay. How many miners --- how many belt men do
6 you have besides you?

7 A. Besides me, three others, Lacey and two other
8 guys.

9 Q. Have you, in your travels on the belt lines and
10 stuff, did you see much floor heaving or anything?

11 A. No.

12 Q. Okay. Any roof conditions you needed --- or any
13 rock falls or anything that weren't reported or ---?

14 A. No. I mean, fire boss kept everything pretty much
15 well reported.

16 Q. And you must have seen the fire boss pretty often;
17 right?

18 A. Yeah. Every night we'd see one.

19 Q. Was he in --- usually in a hurry or ---?

20 A. No, he was just taking his time.

21 Q. Did you notice his --- where he put his dates,
22 times, initials and ---?

23 A. Yeah, the date-up boards.

24 Q. Did you ever look at them?

25 A. Yeah.

1 Q. Were they ever behind any ---?

2 A. Not that I ever seen, they was never behind.

3 Q. Okay. Have you ever --- well, how often have you
4 worked on the motor crew?

5 A. On the outby crew?

6 Q. On the motor, bringing ---

7 A. Oh.

8 Q. --- supplies in or ---?

9 A. I've never worked on the supply crew.

10 Q. Okay. Have you followed them in or been around
11 them?

12 A. Very rarely I'm around them.

13 Q. How many doors do you have to travel through to
14 get to the longwall or 22 and --- from Ellis Portal?

15 A. From Ellis Portal?

16 Q. Uh-huh (yes).

17 A. They put a set in right before the accident right
18 by the portal, and then you had two sets up from 78
19 Break to the mouth of the longwall. And then I can't
20 remember how may they had up toward One Section.

21 Q. Okay.

22 A. I believe they put another set up there, too.

23 Q. Have you ever seen or are you aware of any time
24 that those have been left open?

25 A. No.

1 ATTORNEY BABINGTON:

2 Just as a quick clarifier, you referred
3 to One Section. Are you referring to Headgate 22?

4 A. Yes.

5 BY MR. GODSEY:

6 Q. Have you ever been on the belt and felt a
7 ventilation change directions?

8 A. No.

9 Q. Okay.

10 A. Not since I've been there.

11 Q. Have you heard --- anybody told you that they may
12 have seen that or ---?

13 A. No.

14 Q. In your talking with the people working on
15 Headgate 22 and Tailgate 22, did any of them ever talk
16 to you about being low on air up there or having a
17 methane --- I mean air problems?

18 A. No, not anybody ever mentioned nothing to me.

19 Q. Has your supervisor or the person that had the
20 methane monitor, have they ever detected any methane?

21 A. Not since I've been with him, never.

22 Q. Have you ever heard of any --- how much ---?

23 A. I don't believe he's ever picked up any since I've
24 been with him. I mean, he ain't said nothing.

25 Q. Has any of you --- has anyone --- anybody else

1 ever told you that they picked up any amounts of it,
2 methane?

3 A. Not here recently. A long time ago when they
4 first started driving the Headgate 22 panel they had
5 --- I heard they had just a little bit of gas. I
6 think they may have got one percent, something like
7 that.

8 Q. Okay. Do you feel that --- was ventilation
9 effective all the time?

10 A. Yes.

11 Q. And you never heard anybody complain about
12 the ---?

13 A. Not to me.

14 Q. Okay. Do you know about any time that they've
15 made ventilation changes on your shift?

16 A. Yeah, a couple times they've sent us home because
17 of ventilation changes.

18 Q. Are you aware of any --- if they've ever made any
19 with people underground?

20 A. Not that I'm aware of.

21 Q. Okay. And you say you've never worked on a
22 section?

23 A. No.

24 Q. Okay. Did you ever see them or heard anybody talk
25 about methane had come out of the floor or floor

1 outburst of methane?

2 A. No.

3 Q. Have you ever discussed a safety concern or health
4 concern with your supervisor or management?

5 A. No, not me personally. I've never had any.

6 Q. Well, do you know anybody that had?

7 A. No. I can't think of anybody.

8 Q. Do you know --- have you or do you know of anybody
9 that's ever called a Massey 800 number?

10 A. Not that I know of.

11 Q. What about the MSHA hotline?

12 A. No.

13 Q. Have you ever --- are you familiar with the CO
14 system at your --- carbon monoxide monitors in your
15 belt?

16 A. Yes.

17 Q. Have they ever alarmed while you --- or alerted
18 while you've been underground?

19 A. Just when we're --- while we're cutting and
20 welding. Never, you know --- if we ever go to a belt
21 line and there's no cutting or welding, I've never
22 seen one alert.

23 Q. Okay. Do you ever do any cutting, welding?

24 A. No.

25 Q. What's the procedures, how they do that when they

1 cut and weld on the belt track?

2 A. Well, when we started cutting and welding, Lacey
3 would check for gas first before we even hooked up the
4 tanks of anything. And then we'd always hook up our
5 tanks. Then what we needed to cut, then we'd check
6 --- we'd cut what we needed to and we'd check for hot
7 spots later. And we'd always come back to it two
8 hours after we got done and checked.

9 Q. Okay. Did you ever talk to anybody that's been a
10 welder or cutter on the longwall?

11 A. I've never talked to anybody up there that's done
12 that. I know the electricians up there used to do it,
13 but I never talked to them about it.

14 Q. You never heard where they've had a problem or
15 anything?

16 A. No.

17 Q. Okay. Did you have any concerns with the
18 ventilation system while you were there?

19 A. I never did.

20 Q. So you don't know --- I said you don't know of
21 anybody?

22 A. No.

23 Q. Do you know of anybody?

24 A. No.

25 Q. Have you been there on owl shift when a Federal or

1 State inspector has been there?

2 A. Yep, we had a State inspector a couple times.

3 Q. Did you know he was coming underground?

4 A. No.

5 Q. No one told you?

6 A. No.

7 Q. Okay. Just a second here. Okay. And have you
8 ever talked to any of the people in the bath house
9 room, any, any of the people on the section where
10 they've ever talked to you about having a methane
11 monitor bridged out or ---?

12 A. I've never heard of that.

13 Q. You never ---?

14 A. No.

15 Q. Do you know of anyone that --- any miner has made
16 a --- reported a safety issue or anything or a health
17 concern and the company retaliated against him or
18 fired him or did some kind of punishment to him?

19 A. Not that I know of.

20 Q. Have you ever been injured?

21 A. No.

22 Q. Okay. Where were you at the time of the accident?

23 A. I was at home.

24 Q. How'd you find out that you ---?

25 A. My mother-in-law called me and said that there'd

1 been an accident at the mines.

2 Q. And did the company call you, anybody?

3 A. Not at the day of the accident, that I recall.

4 Q. Did you call them?

5 A. No.

6 Q. Call them when you --- if you were supposed to
7 come out to work or ---?

8 A. No, I figured we wouldn't.

9 MR. GODSEY:

10 Okay. Do you want to talk about
11 anything, Terry?

12 EXAMINATION

13 BY MR. FARLEY:

14 Q. Yeah. David, a couple --- three things to clarify
15 just to make sure I got it right.

16 A. Okay.

17 Q. Well, I think I missed your actual job title or
18 classification at the time of this explosion.

19 A. Okay. My classification of --- at the time was
20 belt man. I was a belt man on the hoot owl.

21 Q. Okay, all right. Now, are you what they --- the
22 Massey people would refer to as a member?

23 A. Yeah.

24 Q. Okay. Did you start as a contractor?

25 A. Yes.

1 Q. With which contracting firm were you?

2 A. I started with David Stanley.

3 Q. Okay. Is that where most of the Massey people
4 seem to come from these days?

5 A. Most of them I talk to, they have.

6 Q. Okay. Now, if I followed you correctly, when you
7 went to UBB about a year ago, you started as a
8 dispatcher at UBB?

9 A. Yes.

10 Q. Okay. Become a belt man after that?

11 A. Yeah.

12 Q. In Headgate One North, you were in somewhere in
13 the area of 75, 80. You said you worked one shift
14 there; right?

15 A. Yeah, before the accident.

16 Q. Okay. Tailgate One North, you indicated you did a
17 little work there?

18 A. Yeah.

19 Q. When was that?

20 A. That was when I first started there.

21 Q. Okay. How long was your --- how many shifts or
22 days?

23 A. One shift there.

24 Q. Okay. You indicated that you went to the longwall
25 belt, I think at least once to change some rollers?

1 A. Yes.

2 Q. How many times were you there?

3 A. We was usually on the longwall belt pretty
4 frequently.

5 Q. Okay. Now, would that have been in --- let's just
6 say in March 2010, how many times would you have been
7 on the longwall belt?

8 A. Probably, I'm going to say about ten times.

9 Q. Okay. Did you do anything other than change
10 rollers and work on the belt itself?

11 A. Nothing.

12 Q. Did you do any rock dusting or cleaning?

13 A. No, we never did.

14 Q. Okay. When you saw the longwall belt in March,
15 did it look like it needed cleaning and dusting?

16 A. Not that I seen. They just dusted it right before
17 I went up there.

18 Q. Okay, okay. And can you pin that down for me?

19 A. It was probably --- I'm going to guess about
20 middle of March.

21 Q. Okay. And you say it was rock dusted before you
22 went up there. Do you think it was hand dusted or
23 machine dusted?

24 A. They can machine dust so far of it, and then
25 they'd have to hand dust it.

1 Q. Okay. Friday evening, April 2nd was the last day
2 you worked before the explosion?

3 A. Yes.

4 Q. Okay. Were you familiar with the company's
5 communication and tracking plan?

6 A. The leaky feeder system?

7 Q. Yes.

8 A. Yeah.

9 Q. Did you have a communication device, a radio?

10 A. Yes.

11 Q. Okay. Did you have a tracking device?

12 A. Yeah.

13 Q. Okay. What was your understanding about the
14 communication and tracking system? Was it fully
15 operational ---

16 A. Yes.

17 Q. --- as far as you knew?

18 A. As far as I knew, it was.

19 Q. Okay. You could actually communicate on your
20 handheld radio?

21 A. Uh-huh (yes).

22 Q. Okay. Did you ever see any evidence that they
23 could actually track you in the mine based on your
24 tracking device?

25 A. Never that I've seen, but I heard people talk

1 about how it works and how it tracks, but I never seen
2 it.

3 Q. Okay.

4 EXAMINATION

5 BY MS. SPENCE:

6 Q. Yeah. Dave, when you were working as a
7 dispatcher ---

8 A. Uh-huh (yes).

9 Q. --- when you went to work there, what kind of
10 training did you get?

11 A. I had to have a week training on the
12 communications system. At the time we didn't have the
13 tracking system in, but just the communication system
14 and all the paperwork that I had to do.

15 Q. The paperwork regarding ---?

16 A. Like sending out the production reports and ---.

17 Q. How often did you do that?

18 A. The production reports?

19 Q. Uh-huh (yes).

20 A. Every night.

21 Q. Once a night?

22 A. Yeah, once a night.

23 Q. What were you trained to do in case of a mine
24 emergency?

25 A. If we had an emergency, it was to notify the

1 president first, and then the --- well, it depended on
2 the sorority (sic) of the accident.

3 Q. Uh-huh (yes).

4 A. But if it was like somebody got hurt, we'd have to
5 notify the president and then the superintendent and
6 the safety director.

7 Q. What if it's something big?

8 A. We had to call --- we had an emergency list. I
9 believe MSHA's number was the first one up there.

10 MS. SPENCE:

11 Okay. Thank you.

12 RE-EXAMINATION

13 BY MR. GODSEY:

14 Q. Did this accident --- did it surprise you?

15 A. Yes.

16 Q. You talked about methane, that you had thought it
17 was a low producing mine of methane or ---?

18 A. As far as I knew, it was.

19 Q. Okay. I just ---. Why didn't it surprise you? I
20 mean, not to ---.

21 ATTORNEY BABINGTON:

22 I'm sorry. Did you say why didn't or why
23 did it.

24 BY MR. GODSEY:

25 Q. Why did it --- what if ---?

1 A. I just never expected it. I mean, you know, as
2 long as I worked there, I've never been around any
3 detectors that detected any methane or anything like
4 that.

5 A. Uh-huh (yes).

6 A. It was just a big surprise when it happened.

7 Q. Okay. No one had ever told you a thing about
8 methane?

9 A. Like I said, a long time ago when they was first
10 driving the Headgate 22 panel, they got just a little
11 bit of gas, but that's the last I heard of it.

12 Q. Okay. You said Sean Walker was your ---?

13 A. Yeah, he was the midnight mine foreman.

14 Q. Had he been your foreman the whole time or ---?

15 A. Not the whole time I worked there. He just stared
16 probably, I'm just going to say five or six months
17 before the accident.

18 Q. Who was your other first boss at that time?

19 A. The first mine foreman we had was Glen Allman.
20 When I first started there he was the midnight mine
21 foreman.

22 Q. If he was to find any safety hazard, would he ---
23 what would he do?

24 A. Oh, he'd report it.

25 Q. And would come back correcting it or ---?

1 A. He'd report it and then correct it.

2 ATTORNEY BABINGTON:

3 And both Walker and Allman had responded
4 to safety hazards?

5 A. Yes.

6 BY MR. GODSEY:

7 Q. Do you have any comment that you'd like to ---?

8 A. No.

9 Q. Anything you want to express or anything?

10 A. No.

11 MR. FARLEY:

12 I've got one.

13 MR. GODSEY:

14 Okay.

15 RE-EXAMINATION

16 BY MR. FARLEY:

17 Q. Now, as part of your belt work, did you do any
18 belt examinations?

19 A. No, not me personally. I never did.

20 Q. Okay.

21 A. That was always a fire boss job. He walked the
22 belts every night and examined them.

23 MR. FARLEY:

24 Okay, okay. I got it.

25 ATTORNEY BABINGTON:

1 Yeah. Can we take a two-minute break?

2 SHORT BREAK TAKEN

3 ATTORNEY BABINGTON:

4 Like, two minutes. You got anything

5 else, Terry, or are you good?

6 MR. FARLEY:

7 Two more questions and that's all I have.

8 ATTORNEY BABINGTON:

9 All right. Go ahead.

10 RE-EXAMINATION

11 BY MR. GODSEY:

12 Q. You talked earlier about ---.

13 ATTORNEY BABINGTON:

14 Oh, wait.

15 MR. GODSEY:

16 Oh, excuse me.

17 ATTORNEY BABINGTON:

18 You ready? Okay.

19 MR. GODSEY:

20 She's ready. I'm the one behind.

21 OFF RECORD DISCUSSION

22 BY MR. GODSEY:

23 Q. You was talking earlier about being sent home for

24 a ventilation change or ---?

25 A. Yes.

1 Q. Do you remember when that was?

2 A. It was in March.

3 Q. Was it the middle of March?

4 A. I believe so.

5 Q. Do you know what the changes were for?

6 A. I can't remember. I'll think of it here in a
7 minute. I can't remember now. I believe --- I'm not
8 a hundred percent, but I believe they had to direct
9 more, a little bit more air toward One, I believe, but
10 I'm not ---.

11 Q. Now, One being ---?

12 A. Headgate 22.

13 Q. Okay. And has anyone told you that Headgate 22
14 had been low on air?

15 A. Not that I've been told.

16 Q. Okay. Well, you never heard it or anything?

17 A. No.

18 ATTORNEY BABINGTON:

19 So in order to get more air to Headgate
20 22, do you recall where they had planned to make
21 ventilation changes?

22 A. I don't know, because the dayshift and evening
23 shift, they worked on that and they sent the hoot owl
24 home as soon as we got there. I don't know.

25 BY MR. GODSEY:

1 Q. Well, they ever sent you home during the day while
2 you were working?

3 A. Not while we was working, no, they didn't.

4 Q. Well, did anything ever happen or during the time
5 that you were sent home because of something, maybe a
6 fan down or something?

7 A. Well, right before the accident, probably two
8 weeks, three weeks before the accident the fan went
9 down. The motor burnt up in and we had to leave.

10 Q. Okay. Do you remember which fan that was?

11 A. It was on the UBB side.

12 Q. Okay.

13 A. And I believe it was the one going toward the
14 south, the south side.

15 Q. Okay.

16 ATTORNEY BABINGTON:

17 Okay. On behalf of MSHA and the Office
18 of Miners' Health, Safety and Training, I want to
19 thank you for appearing and answering questions today.
20 Your cooperation is very important in the
21 investigation as we work to determine the cause of the
22 accident. We request that you not discuss your
23 testimony with any person aside from a personal
24 representative or counsel. After questioning other
25 witnesses, we may call you if we have any follow-up

1 questions. If at any time you have additional
2 information regarding the accident that you'd like to
3 provide to us, please contact us at the contact
4 information previously provided to you.

5 If you wish, you may now go back over any
6 answer you've given during this interview. You may
7 also make any statement that you'd like to make at
8 this time.

9 A. I don't have any.

10 ATTORNEY BABINGTON:

11 Okay. Thanks. And again, I want to
12 thank you for cooperation in this matter.

13

14

* * * * *

15

STATEMENT UNDER OATH CONCLUDED AT 4:00 P.M.

16

* * * * *

17

18

19

20

21

22

23

24

25

1 STATE OF WEST VIRGINIA)

2)

3

4 CERTIFICATE

5 I, Alicia R. Brant, a Notary Public in and
6 for the State of West Virginia, do hereby certify:

7 That the witness whose testimony appears in
8 the foregoing deposition, was duly sworn by me on said
9 date and that the transcribed deposition of said
10 witness is a true record of the testimony given by
11 said witness;

12 That the proceeding is herein recorded fully
13 and accurately;

14 That I am neither attorney nor counsel for,
15 nor related to any of the parties to the action in
16 which these depositions were taken, and further that I
17 am not a relative of any attorney or counsel employed
18 by the parties hereto, or financially interested in
19 this action.



20
21
22 *Alicia R. Brant*
23
24
25