

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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SECRETARY OF LABOR	JUL 05 2017	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 2015-101-M
Petitioner	:	A.C. No. 24-02070-361812
	:	
v.	:	
	:	
JOHN RICHARDS CONSTRUCTION	:	Mine: Richards Pit
Respondent	:	

ORDER OF DEFAULT

Before: Judge Bulluck

This proceeding is before me upon a petition for assessment of civil penalty filed by the Secretary of Labor (“Secretary”) on behalf of the Mine Safety and Health Administration against John Richards Construction (“JRC”), pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d). On October 30, 2015, I issued a Summary Decision affirming Citation Nos. 8762878 and 8762879. On December 2, 2015, the Commission granted JRC’s Petition for Discretionary Review as to Citation No. 8762878 only. On May 11, 2017, the Commission vacated the order granting summary decision as to Citation No. 8762878, and remanded the matter to me for discovery and a full evidentiary hearing on the merits.

Between Tuesday, May 16 and Tuesday, May 23, this office emailed JRC’s representative John Richards at JRC’s address of record five times, and placed nine calls to its phone numbers of record, i.e., the mine office phone and Mr. Richards’ cell phone. This office was only able to reach JRC employee Cindy Llewellyn at the mine office, who agreed to convey to Mr. Richards that this office was seeking his availability for a conference call in order to discuss several preliminary issues: whether the parties are interested in settling; whether JRC wishes a hearing in the matter; whether the parties wish to conduct discovery; and any other housekeeping matters associated with moving this case forward.

On Monday, May 22, Ms. Llewellyn forwarded to this office by email a handwritten note from Mr. Richards stating “I’m working out of range of cell service from early morning till late at nite. I will call when job is finished and I can get some sleep.” In response, this office called Ms. Llewellyn and emailed Mr. Richards, advising that failure to respond to the outstanding request for Mr. Richards’ availability by close of business Tuesday, May 23 would result in issuance of an order to show cause why this case should not be dismissed. Having received no response, on Friday, May 26, this office issued an Order to Show Cause, directing JRC to justify its failure to provide the requested information, or otherwise contact this office directly through its representative. JRC was also put on notice that failure to comply with the Order in three weeks, by Friday, June 16, would result in a default judgment in favor of the Secretary, and an order to pay the civil penalty.


On Monday, June 5, JRC filed a motion construed as a renewal of its September 29, 2015 motion for recusal, which I denied by Order dated Tuesday, June 6. On Tuesday, June 13, JRC emailed this office requesting a two-week extension on the Order to Show Cause deadline; I extended the deadline to Friday, June 30, by Order dated Wednesday, June 14.

On Monday, July 3, by USPS regular mail, this office received a Response to Show Cause Order from JRC, signed by Mr. Richards on June 28, which stated that “[t]he Court is well aware of all of the issues and of the affidavit of Mark Smith regarding the annual inspection of the fire extinguishers that had been done timely as required by MSHA (see record). For these reasons, this citation should be dismissed.” Not only is JRC’s Response untimely, but it raises **more questions than it answers**. It is unclear whether JRC even wishes a hearing, or whether it is asking the judge to vacate the citation and dismiss this case summarily. Furthermore, the Response fails to justify JRC’s failure to provide the requested information or, finally, provide Mr. Richards’ availability.

JRC has been given ample time, over six weeks, to provide this office with dates and times that its representative is available for a prehearing conference with the opposing party and the judge, consistent with the Commission’s instructions on remand. Mr. Richards’ selective, indirect contact with this office to date demonstrates that compliance has been possible but, nevertheless, unintended by Mr. Richards - - an insurmountable impediment to processing this case.

ORDER

This case cannot proceed where Respondent refuses to fulfill its baseline duties and, therefore, it is **ORDERED** that **JUDGMENT BY DEFAULT** is hereby entered for the Secretary of Labor, and John Richards Construction is **ORDERED TO PAY IMMEDIATELY** a civil penalty of \$100.00.¹ **ACCORDINGLY**, this case is **DISMISSED**.


Jacqueline R. Bulluck
Administrative Law Judge

Distribution:

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John Richards, John Richards Construction, 2824 Highway 83 North, P.O. Box 316, Seeley Lake, MT 59868

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¹ Payment should be sent to: Mine Safety and Health Administration, U.S. Department of Labor, Payment Office, P.O. Box 790390, St. Louis, MO 63179-0390. Please include Docket number and A.C. number.