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SOL (MSHA) V. CAPITOL AGGREGATES
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), PETITIONER	Civil Penalty Proceedings Docket No. DENV 79-163-PM A/O No. 41-00010-05001 Capitol Cement Quarry & Plant
v.	
CAPITOL AGGREGATES, INC., RESPONDENT	Docket No. DENV 79-240-PM A/O No. 41-01792-05001 Pit & Plant No. 4

STAY OF DECISION

On January 9, 1980, at the conclusion of the trial in the above cases I allowed the parties 30 days from receipt of the transcripts to file proposed findings and briefs if they so desired. The transcripts were received in my office on February 8, 1980. More than 2 months later on April 14, 1980, having received no briefs or proposed findings, I issued my decision in this matter. On April 21, 1980, I was informed that neither the Government nor the Respondent had received transcripts although both had ordered them.

I am mindful of the fact that on April 11, 1979, in Secretary ex rel. Pasula v. Consolidation Coal Company (1 FMSHRC 25), the Commission ruled that neither the Interim Procedural Rules nor the Act provide for a stay of a decision or a reconsideration thereof once a judge's decision has been issued. The parties are therefore put on notice that I may not have jurisdiction to stay the effective date of the decision. I am also aware, however, that on July 9, 1979, in Secretary of Labor v. Valley Camp Coal Company, 1 FMSHRC 791, the Commission held that Judge Kennedy should have granted a motion for reconsideration of his default decision even though Judge Kennedy was operating under the same interim rules that were in effect when the Pasula case was decided. Also, in at least one case, acting under the interim rules, Judge Broderick reinstated a proceeding after he had issued a default decision and the Commission took no action. I am therefore of the opinion that the Commission no longer considers the Pasula ruling as valid.

There is the further fact that the new procedural rules which became effective July 30, 1979, give the judge wider latitude after he has issued a decision. While the provisions of 29 C.F.R. 2700.65(c) do not exactly fit the instant situation, if interpreted in the light of 29 C.F.R. 2700.1(c) in order to "secure the just * * * determination of all proceedings * * *" it must be interpreted so as to allow me to give the parties an opportunity to file briefs and proposed findings.

It is therefore ORDERED that the effective date of the above decision be stayed pending receipt of affidavits of the parties stating that they ordered but did not receive transcripts and a statement from the reporting company, and a possible consideration of briefs and proposed findings.

IT IS FURTHER ORDERED that the parties file, within 20 days, the affidavits referred to above and that Eagleston Stenotype Reporters file a statement as to whether the parties ordered transcripts and, if so, why they were not delivered. After receipt of this information a further ORDER will be issued as to whether the parties will be allowed to file briefs and proposed findings and, if so, the dates when they will be due.

Charles C. Moore, Jr.
Administrative Law Judge