

CCASE:
SOL (MSHA) V. MITCH COAL
DDATE:
19820819
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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 v.	Civil Penalty Proceeding Docket No. Assessment Control No. KENT 82-57 15-05209-03019 KENT 82-70 15-05209-03021 KENT 82-120 15-05209-03022
MITCH COAL COMPANY, INC., RESPONDENT	No. 4E Mine

DEFAULT DECISION

Counsel for the Secretary of Labor filed proposals for assessment of civil penalty in Docket Nos. KENT 82-57, KENT 82-70, and KENT 82-120 on March 5, 1982, April 22, 1982, and July 6, 1982, respectively. Respondent did not file answers to the proposals for assessment of civil penalty within the time required by section 2700.28 of the Commission's procedural rules, 29 C.F.R. 2700.28. A show-cause order was issued on June 1, 1982, in Docket No. KENT 82-57 asking respondent to explain in writing why it should not be held in default for failure to file an answer. Respondent has not filed a reply to the show-cause order.

A prehearing order was issued on March 16, 1982, in three related cases in Docket Nos. KENT 82-15, KENT 82-26, and KENT 82-40 in which respondent had answered show-cause orders. Counsel for the Secretary thereafter filed on June 2, 1982, a motion requesting that the proposals for assessment of civil penalty in Docket Nos. KENT 82-57 and KENT 82-70 be consolidated for settlement negotiations so that, if a settlement could be achieved, all cases could be settled in a consolidated proceeding and, of course, if they could not be settled, all issues could be considered at a hearing to be held in all of the interrelated proceedings. An order was issued on June 15, 1982, granting the motion for consolidation. The order granting the motion for consolidation advised respondent that the consolidation did not excuse it from filing an answer to the show-cause order issued in Docket No. KENT 82-57 and advised it that an additional show-cause order would be issued in Docket No. KENT 82-70 if respondent did not soon answer the proposal for assessment of civil penalty which had been filed in that docket.

When respondent failed to file an answer to the proposal for assessment of civil penalty within the time required by section 2700.28, a show-cause order was issued on June 24, 1982, in Docket No. KENT 82-70 requiring respondent to explain in writing why it should not be found to be in default for failing to file an answer to the proposal for assessment of civil penalty filed in Docket No. KENT 82-70. No answer to that show-cause order has been filed by respondent.

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A notice of hearing was issued on July 2, 1982, providing for a hearing to be held on August 26, 1982, in all of the cases hereinbefore mentioned. Subsequently, a sixth civil penalty case in Docket No. KENT 82-120, naming Mitch Coal Company, Inc., as the respondent, was assigned to me. A further order of consolidation was issued on July 22, 1982, providing for the hearing in the sixth case to be held in the same proceeding in which a hearing had been scheduled for the other five cases hereinbefore described.

The order of July 22, 1982, provided in paragraph (B) that respondent's right to a hearing in Docket Nos. KENT 82-57, KENT 82-70, and KENT 82-120 was subject to respondent's filing satisfactory answers to the show-cause orders issued in Docket Nos. KENT 82-57 and KENT 82-70 and to respondent's filing an answer to the proposal for assessment of civil penalty in Docket No. KENT 82-120. The body of the order and paragraph (C) of the order specifically warned respondent that it would be held in default and would be deprived of a hearing in Docket Nos. KENT 82-57, KENT 82-70, and KENT 82-120 if it failed to file answers to the show-cause orders issued in Docket Nos. KENT 82-57 and KENT 82-70 and failed to file an answer to show-cause paragraph (C) of the order of July 22, 1982, with respect to Docket No. KENT 82-120. There are return receipts in the official files showing that respondent received all of the show-cause orders and the other orders described in this decision. Respondent has, however, failed to reply to the prehearing order issued in this proceeding and has failed to reply to any of the show-cause orders or to the order of July 22, 1982.

The provisions of section 2700.63(a), which require that a show-cause order be issued before a party is found to be in default for failure to comply with a judge's order, have been followed. Respondent has received at least four different orders warning it that it would be held in default for failure to file answers to the orders issued in these proceedings, but no answer has been received. Therefore, I find respondent to be in default for failure to reply to the show-cause orders and to the order of July 22, 1982. Section 2700.63(b) provides that "[w]hen the Judge finds the respondent in default in a civil penalty proceeding, the Judge shall also enter a summary order assessing the proposed penalties as final, and directing that such penalties be paid."

WHEREFORE, it is ordered:

(A) The issues raised by the proposals for assessment of civil penalty filed in Docket Nos. KENT 82-57, KENT 82-70, and KENT 82-120 are severed from the issues raised by the proposals for assessment of civil penalty filed in Docket Nos. KENT 82-15, KENT 82-26, and KENT 82-40 and the hearing now scheduled to be held on August 26, 1982, in Docket Nos. KENT 82-15, KENT 82-26, and KENT 82-40 will be held in the last-named three dockets as previously scheduled by the notice of hearing issued July 2, 1982.

(B) Pursuant to section 2700.63(b) of the Commission's rules, respondent, having been found to be in default with respect to the proposals for

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assessment of civil penalty filed in Docket Nos. KENT 82-57, KENT 82-70, and KENT 82-120, shall, within 30 days from the date of this decision, pay civil penalties totaling \$476.00 which are allocated to the respective violations as follows:

Docket No. KENT 82-57

Citation No. 950085 6/29/81 70.508 \$ 66.00
Citation No. 963081 10/15/81 70.208(a)..... 40.00

Total Civil Penalties in Docket No. KENT 82-57 ...\$106.00

Docket No. KENT 82-70

Citation No. 961970 12/30/81 70.208(a)..... \$ 26.00
Citation No. 962524 12/30/81 75.400140.00
Citation No. 962525 12/31/81 75.403..... 26.00
Citation No. 962526 12/31/81 75.1306 60.00
Citation No. 1196212 1/14/82 70.207(a)..... 52.00

Total Civil Penalties in Docket No. KENT 82-70 ...\$304.00

Docket No. KENT 82-120

Citation No. 962527 1/8/82 75.316.....\$ 26.00
Citation No. 962538 2/12/82 70.208(a).....40.00

Total Civil Penalties in Docket No. KENT 82-120 ..\$ 66.00

Total Civil Penalties in This Proceeding \$476.00

Richard C. Steffey
Administrative Law Judge
(Phone: 703-756-6225)