

FEDERAL **MINE** SAFETY AND HEALTH REVIEW COMMISSION

OFFICE: OF ADMINISTRATIVE LAW JUDGES
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JUL 31 1984

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No: PENN 83-158
Petitioner	:	A/O No: 36-06472-03501
	:	
v.	:	Brownsville Mine
	:	
	:	
CICCONI COAL COMPANY,	:	
Respondent	:	

DECISION

Before: Judge Moore

The civil penalty proceeding was initiated by the Secretary's petition filed July 5, 1983, which alleged two violations and sought a penalty in the amount of \$40. When respondent did not file a timely answer, Judge Merlin issued a Show Cause Order in October of 1983. The respondent filed a hand written answer to that Show Cause Order on December 7, 1983.

On February 7, 1984, I issued a Prehearing Order to which the Solicitor responded. The respondent refused to claim that order from the Post Office Department. On June 25, 1984, I issued a Show Cause Order ordering respondent. to show cause why it should not be held in default for its failure to respond to the Prehearing Order. Respondent failed to claim that Order to Show Cause. The two orders that respondent has failed to claim from the Post Office Department are attached to the file.

. Commission Rule 29 C.F.R. 2700.5(v) states:

"The first document filed, **and** every document filed by a lawyer or other representative, shall include the parties' or other filing persons' address and business telephone numbers. Written notice shall be promptly given of any change of address or business telephone number".

The purpose of the rule is so that a respondent can be served with process. The **rule** would be totally thwarted if

a respondent could avoid service by merely refusing to claim properly addressed mail. I hold that the refusal to claim mail addressed to an address that a respondent has supplied, constitutes service.

I therefore hold respondent in DEFAULT and order that he pay, within 30 days, a civil penalty of \$40 to MSHA. I also affirm both citations.

Charles C. Moore, Jr.

Charles C. Moore, Jr.,
Administrative Law Judge

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