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SOL (MSHA) V. MONUMENT MINING
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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 PROCEEDING

Docket No. WEVA 85-25
A.C. No. 46-04465-03534

v.

No. 1 Surface Mine

MONUMENT MINING CORPORATION,
RESPONDENT

DEFAULT DECISION

Before: Judge Steffey

An order was issued on December 18, 1984, in the above-entitled proceeding permitting the law firm which had filed an answer to the Secretary of Labor's petition for assessment of civil penalty to withdraw as counsel for respondent on the ground that the law firm was no longer authorized to represent respondent in this proceeding.

The grant of counsel's request to withdraw left the case before me with no known representative and with no official address or telephone number at which respondent could be reached for the purpose of serving notices of hearing or orders. The Commission's rules, 29 C.F.R. 2700.5(c), require that each document filed with the Commission provide the filing person's name, address, and telephone number and require that the Commission be promptly notified of any change in address or business telephone number. Therefore, the order allowing respondent's counsel to withdraw also contained a request that respondent provide the name, address, and telephone number of the person who had been designated by respondent to represent it in this proceeding in view of the fact that respondent's counsel had been allowed to withdraw as respondent's representative. Paragraph (C) of the order stated that:

(C) This order is being sent to the business address given for respondent in MSHA's petition for assessment of civil penalty. If no reply to this order is received, or if the letter is returned by the post office as undeliverable, respondent will be found to be in default and a final order will be issued requiring respondent to pay the penalty of \$500 proposed by MSHA despite the fact that the default decision may be undeliverable.

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The envelope containing the above-described order was returned by the post office as undeliverable because respondent had declined to accept the envelope after the post office had given respondent two notices of the fact that the envelope containing the order had been received by the post office.

Respondent's refusal to provide the name of a person to represent respondent in this proceeding prevents me from being able to process the case because there is no known address at which respondent will accept notices of hearing or orders. Therefore, I find respondent to be in default for failure to comply with the Commission's rules or accept envelopes sent by certified mail. Section 2700.63(b) of the Commission's rules provides that when a judge finds the respondent in default in a civil penalty proceeding, he "shall also enter a summary order assessing the proposed penalties as final, and directing that such penalties be paid."

WHEREFORE, it is ordered:

Monument Mining Corporation, having been found to be in default, shall, within 30 days from the date of this decision, pay a civil penalty of \$500 for the violation of 30 C.F.R. 77.404(a) alleged in Citation No. 2142832 dated May 16, 1984.

Richard C. Steffey
Administrative Law Judge