

CCASE:

SOL (MSHA) V. MITCH COAL CO.

DDATE:

19850225

TTEXT:

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. KENT 84-27
A.C. No. 15-05209-03508

v.

No. 4E Mine

MITCH COAL CO., INC.,
RESPONDENT

DEFAULT DECISION

Appearances: Mary Sue Ray, Esq., Office of the Solicitor,
U.S. Department of Labor, Nashville, Tennessee,
for Petitioner;
No one appeared at the hearing on behalf of
Respondent.

Before: Judge Steffey

When the hearing in the above-entitled proceeding was convened in Prestonsburg, Kentucky, on December 11, 1984, pursuant to a written notice of hearing dated October 24, 1984, and received by respondent on October 26, 1984, counsel for the Secretary of Labor entered her appearance, but no one was present at the hearing to represent respondent.

Under the provisions of 29 C.F.R. 2700.63(a), when a party fails to comply with an order of a judge, an order to show cause shall be directed to the party before the entry of any order of default. An order to show cause was sent to respondent on December 14, 1984, pursuant to section 2700.63(a), requiring respondent to show cause why it should not be found to be in default for failure to appear at the hearing convened on December 11, 1984.

A reply to the show-cause order was filed by respondent on December 31, 1984. Respondent states that its mine has been closed since October 1, 1984, because of loss of its mining permit. Respondent's reply explains that its representative traveled to Frankfort, Kentucky, on December 10, 1984, and did not return until late on December 11, 1984. As a result of respondent's concern about being unable to work, its representative states that he simply forgot about the date of the hearing.

I am sympathetic about respondent's loss of its mining permit and its efforts to achieve the reopening of its mine, but I must also consider the fact that we can hardly process the cases that are assigned to us unless we require those who have asked for hearings to appear at the appointed time. Surely, respondent could have made a note of the hearing date on a calendar and could have asked for a continuance if December 10 was the only date that it could have traveled to Frankfort to find out whether it could reacquire its mining permit.

Moreover, it is difficult to communicate with respondent except by mail. The foregoing conclusion is based on a statement made by the Secretary's counsel at the hearing in response to my inquiry as to whether she had any comments she wished to make about respondent's failure to send a representative to the hearing (Tr. 3-4):

No, Your Honor, except that I have tried to contact Mr. Sammons, both at the mine and at his No. 2 Mine, and also at his home phone number this week, and I had no answer, so I have tried to be in touch with him several times in the past week.

In the circumstances described above, I find that respondent has failed to give a satisfactory reason for failing to appear at the hearing convened on December 11, 1984, and that respondent should be held to be in default for failure to appear at the hearing. Section 2700.63(b) of the Commission's rules 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:

Respondent, having been found to be in default, is ordered, within 30 days from the date of this decision, to pay civil penalties totaling \$100.00 for the five violations alleged in this proceeding. The penalties are allocated to the respective violations as follows:

Citation No. 2183250	10/4/83	48.9	\$ 20.00
Citation No. 2183251	10/6/83	75.1722(a)	...	20.00
Citation No. 2183252	10/6/83	75.1719-1(d)	..	20.00
Citation No. 2183253	10/6/83	75.316	20.00
Citation No. 2183254	10/6/83	75.1100-2	20.00

Total Civil Penalties Proposed in This
Proceeding..... \$100.00

Richard C. Steffey
Administrative Law Judge