

CCASE:
SOL (MSHA) V. BOB CRUMBY
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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. CENT 85-96
A.C. No. 14-01116-03501 IIF

v.

Fort Scott Mine

BOB CRUMBY,
RESPONDENT

ORDER VACATING DEFAULT
ORDER OF ASSIGNMENT

Before: Judge Merlin

On July 23, 1985, the Secretary filed a proposal for penalty against the respondent for an alleged violation of the Federal Mine Safety and Health Act of 1977. Because no answer had been received, the respondent was ordered on January 28, 1986 to file an answer within 30 days or to show good reason for his failure to do so. As of May 29, 1986 the Commission had received no response and on that date the respondent was found in default and ordered to pay \$625, the full amount of the proposed penalty. However, on June 12, 1986, the Commission received a letter from the respondent stating that it had filed an answer. Further investigation revealed that respondent had filed his answer with the Solicitor, but not with the Commission. The answer was postmarked February 22, 1986, well within the 30-day period for response granted by the order of January 28, 1986. The Solicitor now has forwarded the respondent's answer to the Commission which should have been done at the time. Although the answer should have been filed with the Commission rather than the Solicitor, the operator is pro se. Accordingly, I accept the answer as timely filed.

The default of May 29, 1986 was based on a mistake of fact, i.e. that no answer was filed. I find it is the interest of justice to vacate the default and to allow the case to proceed.

Accordingly, the Order of Default of May 29, 1986 is hereby RESCINDED.

This case is hereby assigned to Administrative Law Judge Gary Melick.

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All future communications regarding this case should be addressed to Judge Melick at the following address:

Federal Mine Safety and Health
Review Commission
Office of Administrative Law Judges
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Paul Merlin
Chief Administrative Law Judge