

CCASE:  
SOL (MSHA) V. SUPER BLOCK COAL  
DDATE:  
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TTEXT:

Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)  
Office of Administrative Law Judges

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
PETITIONER

CIVIL PENALTY PROCEEDING

Docket No. LAKE 88-79  
A.C. No. 12-01986-03504

v.

Hunley Creek

SUPER BLOCK COAL CORPORATION,  
RESPONDENT

ORDER TO SHOW CAUSE

This case was scheduled for hearing in Evansville, Indiana, on March 9, 1989. A Notice of Hearing was served on the parties informing them of the hearing date and location, and the returned postal service certified mailing receipt reflects that it was received by the respondent's representative of record, Mr. Larry Wallace, President, Super Block Coal Corporation, on November 19, 1988. An Amended Notice of Hearing advising the parties of the hearing date and location in Evansville, was issued on February 23, 1989, and Mr. Wallace received this notice by certified mail on February 27, 1989.

When the case was called for hearing in Evansville, at 9:30 a.m., on Thursday, March 9, 1989, Mr. Wallace failed to appear, and the hearing proceeded without him, and the petitioner presented evidence in support of the citation in issue and the proposed civil penalty assessment of \$20 for the violation noted in the citation. After the hearing had begun, I received a telephone message from a Mr. Danny Jasper, who identified himself as the mine superintendent, and he informed the individual taking the message that he was unable to attend the hearing. Upon return to my office after the close of the record, I found a telephone message from Mr. Jasper who had called my secretary in Falls Church, Virginia, on the day of the hearing, to advise her that he was unable to attend the hearing because "no one was at the mine to supervise the men." Mr. Jasper had not previously entered any appearance in this matter, and no further communication has been received from Mr. Wallace.

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Since Mr. Wallace is the respondent's representative of record, it was incumbent on him to timely notify me of his intention not to appear at the hearing. Under the circumstances, and in view of the failure by the respondent to appear at the scheduled hearing, or to otherwise notify me that it did not intend to appear, the respondent (Larry Wallace) IS ORDERED TO SHOW CAUSE, and to explain, why it should not be declared in default and a summary decision and order entered pursuant to Commission Rule 63, 29 C.F.R. 2700.63, assessing the proposed civil penalty of \$20 as final, and directing that such payment be made. The respondent is FURTHER ORDERED to file its response within ten (10) days of the receipt of this Show Cause Order.

George A. Koutras  
Administrative Law Judge