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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. CENT 89-56-M
A.C. No. 16-00970-05614-A

v.

Morton Salt Weeks Island Mine

TONY CHANEY, EMPLOYED BY
MORTON SALT DIVISION/
MORTON THIOKOL INC.

DEFAULT DECISION

Before: Judge Koutras

Statement of the Case

This proceeding concerns a proposal for assessment of civil penalty filed by the petitioner against the respondent Tony Chaney pursuant to section 110(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(c). The petitioner seeks a civil penalty assessment in the amount of \$400, against the respondent for an alleged knowing violation of mandatory safety standard 30 C.F.R. 57.9003, as noted in a section 104(d)(2) Order No. 2866484, issued on August 25, 1987, at the Weeks Island Mine operated by Morton Thiokol, Inc., in New Iberia, Iberia Parish, Louisiana. According to the proposal filed by the petitioner, the respondent was employed at this mine as a mine maintenance supervisor, and was acting in that capacity at the time the order in question was issued.

The pleadings in this case reflect that copies of the petitioner's proposed civil penalty assessment were served on the respondent by certified mail on March 16, and 24, 1989, and the return certified mailing receipt from the U.S. postal service reflects that the respondent received the proposed civil penalty assessment notification on March 27, 1989. However, the respondent failed to file an answer to the civil penalty assessment proposal as required by Commission Rule 28, 29 C.F.R. 2700.28

In view of Mr. Chaney's failure to file an answer, I issued an Order to Show Cause on May 22, 1989, directing him to explain why he should not be held in default and immediately ordered to pay the proposed civil penalty assessment for his failure to file an answer to the civil penalty assessment proposal filed against

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him by the petitioner. The order further directed Mr. Chaney to respond within ten (10) days. The return certified mailing receipt from the U.S. Postal Service reflects that Mr. Chaney received my order on May 24, 1989. However, as of this date, he has not responded.

Discussion

The applicable Commission Rules in this case provide as follows:

29 C.F.R. 2700.28

2700.28 Answer.

A party against whom a penalty is sought shall file and serve an answer within 30 days after service of a copy of the proposal on the party. An answer shall include a short and plain statement of the reasons why each of the violations cited in the proposal is contested, including a statement as to whether a violation occurred and whether a hearing is requested.

29 C.F.R. 2700.63

2700.63 Summary disposition of proceedings.

(a) Generally. When a party fails to comply with an order of a judge or these rules, an order to show cause shall be directed to the party before the entry of any order of default or dismissal.

(b) Penalty proceedings. When 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.

The record in this case establishes that the respondent was served with copies of the petitioner's proposal for assessment of civil penalty for the alleged violation in question and that he has failed to file a timely answer. In addition, he has failed to avail himself of an opportunity to explain why he did not file a timely answer, and he was advised of the consequences of his failure to do so. He has also failed to respond to my show cause order where he was specifically advised that his failure to respond and file an answer would place him in default. Under the circumstances, I conclude and find that the respondent Tony Chaney is in default and has waived his right to be further heard in this matter. I see no reason why the petitioner's proposed civil penalty assessment of \$400 should not be affirmed and a

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final order entered assessing this penalty against Mr. Chaney as the final order of the Commission.

ORDER

Pursuant to Commission Rule 63, 29 C.F.R. 2700.63, judgment by default is herewith entered in favor of the petitioner, and the respondent Tony Chaney IS ORDERED to immediately pay to MSHA the sum of \$400, as the final civil penalty assessment for the violations in question.

George A. Koutras
Administrative Law Judge