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SOL (MSHA) V. DAN-DEL COALS  
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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. KENT 90-193  
A.C. No. 15-15251-03541

v.

Wallins No. 3 Mine

DAN-DEL COALS, INC.,  
RESPONDENT

DECISION AND ORDER OF DEFAULT

Appearances: Mary Sue Taylor, Esq., U.S. Department of Labor,  
Office of the Solicitor, Nashville, Tennessee,  
for the Petitioner;  
No appearance on behalf of Respondent.

Before: Judge Maurer

Pursuant to notice, a hearing was held in the captioned matter on October 16, 1990, in London, Kentucky. The Secretary appeared and presented the testimony of two witnesses; Howard Scott and Robert Blanton, both MSHA employees. No one appeared on behalf of the respondent, nor was any contact made by respondent with my office to cancel or continue this hearing.

At the conclusion of the petitioner's testimony, she moved for a default decision. I took the motion under advisement on the record and when I returned to my office issued an Order to Show Cause to the respondent to show cause why it should not be defaulted for failing to appear at the scheduled hearing.

Respondent filed a timely response, indicating that they did try to call the Courthouse in London and Mrs. Taylor's office to say they could not make the hearing. The letter does not say when these calls were made, but presumably the morning of the hearing itself. The letter went on to state that the company is no longer in operation and has not been since July 27, 1990. All their employees have been laid off and have scattered.

I do not find good cause in the respondent's explanation for their non-appearance. It is very expensive for the government to conduct these hearings. Four government employees and a court reporter traveled to this hearing site and conducted an evidentiary hearing in the absence of the party who originally requested it. Respondent could at the very least have requested cancellation of the hearing a week or even a few days beforehand. Had this been done, it could have been re-scheduled for another time when the company was better able to defend its position.

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Accordingly, petitioner's motion is granted and the respondent is found to be in default. The penalty of \$1162 proposed by the Secretary in this case must therefore be paid within 30 days of the date of this decision.

Roy J. Maurer  
Administrative Law Judge