

CCASE:  
SOL (MSHA) V. DONNIE SKIDMORE  
DDATE:  
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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FALLS CHURCH, VIRGINIA 22041

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. KENT 94-125
Petitioner	:	A.C. No. 15-17301-03516
v.	:	
	:	No. 1 Mine
DONNIE SKIDMORE, d/b/a	:	
3-BOY COAL and T & H	:	
CONSTRUCTION,	:	
Respondent	:	

DECISION

Appearances: Thomas A. Grooms, Esq., Office of the Solicitor  
U.S. Department of Labor, Nashville, Tennessee,  
for Petitioner.

Before: Judge Barbour

In this proceeding the Secretary of Labor (Secretary), on behalf of Mine Safety and Health Administration (MSHA) and pursuant to Sections 105 and 110 of the Federal Mine Safety and Health Act of 1977 (Mine Act or Act), seeks assessment of a civil penalty of \$5,000 against Donnie Skidmore, d/b/a 3-Boy Coal and T & H Construction for a violation of 30 C.F.R. 48.6, a mandatory safety standard requiring training for newly employed experienced miners. The alleged violation was cited in an order of withdrawal issued on June 16, 1993, pursuant to section 104(g)(1) of the Act. 30 U.S.C. 814(g)(1). The order states that six named employees were observed working at the Respondent's mine and that no record exists of the employees having received newly employed experienced miner training as required by the standard. The proposed assessment was calculated through implementation of the Secretary's special assessment regulations found at 30 C.F.R. 100.5.

Donnie Skidmore answered on behalf of the Respondent, asserting that he was not a partner of T & H Construction when the alleged violation was cited, that four of the cited employees had received the required training, although their training records had been destroyed subsequently. He further stated that two of the cited employees had been trained but their training records had not been completed. Skidmore requested that "the assessment be waived."

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Following the issuance of a prehearing order and a responsive verbal communication from Skidmore, in which he listed the witnesses he intended to call, the case was noticed for hearing on March 14, 1994 in London, Kentucky. Subsequently, the hearing was rescheduled to be heard on April 21, 1994, commencing at 8:30 a.m. On April 12, 1994, a notice of hearing site was issued that set forth the address in London wherein the hearing would be convened.

All of the orders and notices were mailed to Skidmore at the Respondent's address of record by certified mail. None were returned as undeliverable by the U.S. Postal Service. Tr. 10.

#### THE HEARING

On April 21, 1994, at 8:30 a.m., and as previously noticed I called the matter for hearing in the City Hall, 501 South Main Street. No person representing the Respondent was present and I delayed the hearing for one hour, during which time counsel for the Secretary, at my request, made several telephone calls in an effort to locate Donnie Skidmore or some other representative of Respondent.

At approximately 9:30 a.m. the hearing commenced. Counsel for the Secretary entered an appearance. No one was present to represent the Respondent. Tr. 7. I questioned counsel regarding his contacts with Donnie Skidmore or any representatives of the Respondent. Counsel advised me that he had a telephone number for the Respondent and that a week or two prior to April 21, he had tried to call the Respondent. The attempt was unsuccessful because the number was for a mobile telephone that had been taken out of its service area. Counsel further stated that on April 20, he had received a telephone call from Sherry Crawford, a person identified as a witness in Respondent's prehearing response. Ms. Crawford asked counsel about the time and location of the hearing and counsel provided the information. Counsel explained to Ms. Crawford that he had been unable to contact Donnie Skidmore or anyone from the company. Ms. Crawford gave counsel a different telephone number, which counsel tried. However, again counsel got a recorded message that the telephone to which the number connected was out of range of its signal.

In addition to these attempts to contact Skidmore, or other representatives of the Respondent, on April 21, between the hours of 8:30 a.m. and 9:30 a.m., and, as noted previously, counsel placed several more unsuccessful telephone calls to the Respondent's telephone numbers. Counsel also called his office and determined a representative of the Respondent had not attempted to contact counsel there. Tr. 7-9.

Finally, I determined that no person representing Respondent had called the City Hall to speak with me.

FINDING OF DEFAULT

After describing his efforts to locate the Respondent, counsel moved for a default judgement and an order requiring Respondent to pay the proposed penalty. Tr. 13-14. I expressed reservations about the amount of the proposed penalty based on what appeared to be the Respondent's small size and no history of previous violations. In response counsel stated in part:

[T]o require . . . the Secretary, where [a] party fails to attend [a hearing and] in a situation where the Secretary and the [C]ommission have been put to the expense of appearing . . . to benefit from . . . a determination of a penalty less than proposed, sets a bad precedent for [r]espondents who are so neglectfully cavalier as not to appear at the hearing.

Tr. 13-14.

AAs I noted at the hearing, the rules of the Commission are clear regarding the judge's powers if a party fails to attend a scheduled hearing. "The Judge, where appropriate, may find the party in default . . . without issuing an order to show cause." Further, "[w]hen the Judge finds a party in default in a civil penalty proceeding, the Judge shall also enter an order assessing appropriate civil penalties and directing that such penalties be paid." 29 C.F.R. 2700.66(b), 2700.66(c). Whatever reservations I may have had about the amount of the penalty, I find counsel's point to be well taken. Therefore, I will hold Respondent in default and will assess the penalty as proposed. See Tr. 15-16.

The hearing process will function efficiently and as intended only if the parties take seriously their obligations under the Act. One of the most important obligations is to comply with the notices and orders of the Commission. Disregarding the Commission's directives, especially a notice to appear at a hearing, results in a waste of the Commission's and other parties' limited resources. Perhaps even more important, it indicates a disdain for the hearing process that can undermine public confidence in the Act and its administration. As counsel implied, rewarding such contemptuous conduct with anything less than the penalty proposed encourages its repetition.

Therefore, I find that Donnie Skidmore, d/b/a 3-Boy Coal and T & H Construction, is in DEFAULT, that the violation of section 48.6 existed as charged and that it is appropriate to assess Respondent the proposed civil penalty of \$5,000.

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ORDER

Order No. 3831991 is AFFIRMED. Donnie Skidmore, d/b/a 3-Boy Coal and T & H Construction, is ORDERED to pay a civil penalty of \$5,000 to MSHA within 30 days of the date of this decision and upon receipt of payment this matter is DISMISSED.

David F. Barbour  
Administrative Law Judge

Distribution:

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