

June 10, 1996

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEST 95-512-M
Petitioner : A. C. No. 10-01900-05505
: :
v. :
: Plant No. 4
DE ATLEY COMPANY, :
INCORPORATED, :
Respondent :

ORDER VACATING DEFAULT
DECISION APPROVING SETTLEMENT
ORDER OF DISMISSAL

Before: Judge Merlin

This case is before me pursuant to Commission order dated April 17, 1996.

On March 21, 1996, the operator filed a letter requesting relief from an order of default which was issued on February 7, 1996. The basis for the operator's request is that a settlement was reached prior to the order of default, but that the person responsible for the case resigned and his replacement was unaware of the settlement motion. As a result, the operator did not sign the settlement motion until after the default was issued.

On April 1, 1996, the Solicitor filed a response to the operator's request for relief, recommending that the matter be remanded to the undersigned and stating that the Secretary opposed the reopening of the final order.

On April 29, 1996, I issued an order directing the Solicitor to either file the agreed upon settlement motion or submit a brief supporting his opposition to reopening. In that order I found that the operator's statements constituted grounds for relief from default. See, R B Coal Company, 17 FMSHRC 2153 (November 1995).

On May 16, 1996, the parties filed a joint motion to approve settlement for the one violation in this case. A reduction in the penalty from \$1,019 to \$570 is proposed. I have reviewed the documentation and representations in this case and conclude

that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act.

In light of the foregoing, it is **ORDERED** that the default dated February 7, 1996, be and is hereby **VACATED**.

It is further **ORDERED** that the motion for approval of settlement is **GRANTED**, and the operator having paid, this case is **DISMISSED**.

Paul Merlin
Chief Administrative Law Judge

Distribution: (Certified Mail)

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