

CCASE:
MSHA V. SUNBEAM COAL
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
WASHINGTON, DC
March 10, 1980

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA), Docket No. PITT 79-210 thru 214
v.

SUNBEAM COAL CORPORATION

ORDER

The petition for discretionary review is dismissed. Section 113(d)(2)(A)(i) requires that a Petition for discretionary review be filed and served within 30 days after the issuance of the judge's decision. The judge's decision was issued on January 29, 1980. The petition for discretionary review was received by the Commission on March 3, 1980, more than 30 days after the issuance of the judge's decision. Commission Rule 5(d), 29 CFR 2700.5(d), states that "filing of a petition for discretionary review is effective only upon receipt." 1/

Accordingly, the Petition is dismissed as untimely filed.
A. E. Lawson, Commissioner

Marian Pearlman Nease, Commissioner

1/ Good cause to waive the statutory period is neither claimed nor shown in the Petition; the certificate of service states that the petition was mailed on February 28, 1980, the 30th day after the issuance of the judge's decision. We therefore need not and do not decide whether the 30-day time period in section 113(d)(2)(A)(i) may be waived for good cause. We also do not view the additional 5-day period provided for filing responses or other documents when service of document is by mail in 29 CFR 2700.8(b) to apply to the statutory

period here.