

CCASE:
MSHA V. EASTON CONSTRUCTION
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
February 27, 1981

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
Petitioner

v. Docket No. KENT 80-219

EASTON CONSTRUCTION CO., INC.
Respondent

DIRECTION FOR REVIEW AND ORDER

The administrative law judge's decision of January 28, 1981, is directed for review. The Commission finds that the judge's disposition of this case may be contrary to law or Commission policy. 30 U.S.C. 823(d)(2)(B). The issue is whether the judge's finding that Respondent failed to file a responsive answer to a show cause order and waived its right to a hearing is appropriate under the circumstances presented.

On May 27, 1980, the Secretary of Labor filed a proposal for assessment of civil penalty against Easton Construction Co., Inc., seeking penalties totaling \$915.00 for three alleged violations of the Act. No answer was filed. On October 24, 1980, the acting chief administrative law judge issued an order to Respondent to show cause, within 15 days, why it should not be deemed to have waived its right to a hearing and contest of the proposed penalty and why the proposed penalty should not be summarily entered as a final order of the Commission and collection procedures initiated. By letter dated November 7, 1980, and received by the Commission on November 12, 1980, Easton pro se advised the judge that it had forwarded a check in the amount of \$26.00 for a penalty to the Bristol, Virginia, MSHA office of assessments and offered additional information if "needed by your

office." On December 19, 1980, the administrative law judge assigned to the case issued a prehearing order with response due by January 12, 1981. On January 19, 1981, an attorney for Respondent advised the judge that the December 19, 1980 prehearing order had not been received by Easton until January 15, 1981 and requested a 30 day extension from January 12, 1981 to comply with the order. On January 28, 1981, the judge issued a decision finding Respondent had failed to file a responsive answer to the show cause order of October 24, 1980, holding that Respondent had waived its right to a hearing, assessing the proposed penalties of \$ 00915.00 as the final order of the Commission and ordering payment within 30 days.

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After review of the complete record in this matter, we find that the judge's action fails to comport with Commission policy. As we recently stated, "a default judgment is a harsh remedy not suitable when a party has substantially complied with a show cause order, and has not demonstrated bad faith." Sigler Mining Co., WEVA 80-519 (January 27, 1981). See also, Coaltrain Corp., 1 FMSHRC 1831 (1979); BB & W Coal Co., 1 FMSHRC 46 (1979). We find this reasoning applicable to the facts of the present case.

Accordingly, the judge's decision is vacated and the case is remanded for further proceedings.

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Distribution

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