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MSHA V. BENTLEY COAL
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
June 14, 1990

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

v. Docket No. WEVA 90-36

BENTLEY COAL COMPANY

BEFORE: Ford, Chairman; Backley, Doyle, Lastowka and Nelson, Commissioners

ORDER

BY THE COMMISSION:

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1988) ("Mine Act"). On May 31, 1990, Commission Chief Administrative Law Judge Paul Merlin issued an Order of Default finding Bentley Coal Company ("Bentley") in default for its failure to answer the Secretary of Labor's civil penalty proposal and the judge's order to show cause. The judge assessed the civil penalty of \$894 proposed by the Secretary. For the reasons that follow, we vacate the default order and remand this case for further proceedings.

The judge's jurisdiction over this case terminated when his default order was issued on May 31, 1990. 29 C.F.R. § 2700.65(c). Under the Mine Act and the Commission's procedural rules, once a judge's decision has issued, relief from the decision may be sought by filing with the Commission a petition for discretionary review within 30 days of the decision. 30 U.S.C. § 823(d)(2); 29 C.F.R. § 2700.70(a). Bentley mailed to the Commission a letter, dated June 4, 1990, that appears to be its answer to the Secretary of Labor's civil penalty proposal. Bentley's June 4 letter was received by the Commission on June 7, 1990. We will treat Bentley's letter as a timely filed petition for discretionary review. See e.g., Middle States Resources, Inc., 10 FMSHRC 1130 (September 1988).

Although Bentley filed a "Blue Card" request for a hearing in this matter, neither its June 4 letter nor any other part of the record

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reveals the reasons for its failure to file its answer within 30 days after receipt of the Secretary's penalty proposal petition, as required by 29 C.F.R. § 2700.28, or its failure to respond to the judge's show cause order. We grant the petition and vacate the judge's default decision in order to allow Bentley, which is apparently proceeding pro se, an opportunity to present the reasons for these failures, and for the Secretary to interpose any objections to relief from the default decision.