

CCASE:

MSHA V. BEECH FORK PROCESSING

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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.

July 26, 1990

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

v.

Docket Nos. KENT 90-87

KENT 90-88

BEECH FORK PROCESSING, INC.

KENT 90-89

BEFORE: Backley, Doyle and Nelson, Commissioners

ORDER

BY Backley, Doyle and Nelson, Commissioners

In this civil penalty proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. •801 et seq. (1988)("Mine Act"), Commission Chief Administrative Law Judge Paul Merlin issued an Order of Default on June 18, 1990, finding Beech Fork Processing, Inc. ("Beech Fork") in default for failure to answer the Secretary of Labor's civil penalty petitions and the judge's show cause orders in the subject cases. The judge assessed for all three cases the Secretary's proposed civil penalties of \$10,123. By letter dated July 12, 1990, addressed to Judge Merlin, Beech Fork petitioned the Commission for an opportunity to continue its contest of MSHA's proposed penalties in the subject cases. Attached to Beech Fork's July 12 letter is a letter dated June 11, 1990, from Beech Fork to the Department of Labor's Mine Safety and Health Administration ("MSHA") that appears to be Beech Fork's answer to the Secretary of Labor's civil penalty proposal filed in Docket No. KENT 90-89. We deem Beech Fork's July 12 letter and attached letter to constitute a timely petition for discretionary review of the judge's default order. For the reasons that follow, we grant the petition, vacate the default order, and remand for further proceedings.

The judge's jurisdiction over this case terminated when his default order was issued on June 18, 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). In its July 12 letter, Beech Fork seeks relief from the default order and explains that it did not timely respond to the show cause orders due to certain changes in its personnel. Beech Fork's letter was received by

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the Commission on July 17, 1990. Under the circumstance., we will treat Beech Fork's July 12 letter as a timely filed petition for discretionary review. E.g., Patriot Coal Co., 9 FMSHRC 382, 383 (March 1987). Beech Fork alleges that because of personnel changes, it was unable to timely respond to the judge's show cause orders. The Commission has generally afforded relief from default upon a showing of inadvertence, mistake, or excusable neglect. E.g., Blue Circle Atlantic, Inc., 11 FMSHRC 2144, 2145 (November 1989). We are unable, on the basis of the present record, to evaluate the merits of Beech Fork's assertions, but in the interest of justice we will permit Beech Fork to present its position to the judge, who shall determine whether appropriate grounds exist for excusing its failure to timely respond. See, e.g., A.H. Smith Stone Company, 11 FMSHRC 2146, 2147 (November 1989).

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For the foregoing reasons, we grant Beech Fork's petition for discretionary review, vacate the judge's default order, and remand this matter to the judge for appropriate proceedings. Beech Fork is reminded to file documents connected with this proceeding with the judge and to serve counsel for the Secretary with copies of any of its filings. 29 C.F.R. •2700.5(b), 2700.7. */

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner

*/ Pursuant to 30 U.S.C. •823(c), we have constituted ourselves as a panel of three members to exercise the powers of the Commission in this matter.

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Distribution

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