

CCASE:  
MSHA V. RANDY COAL  
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION  
WASHINGTON, D.C.  
September 27, 1990

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

v. Docket No. PENN 90-80  
RANDY COAL COMPANY

BEFORE: Backley, Acting Chairman; Doyle 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 July 18, 1990, Commission Chief Administrative Law Judge Paul Merlin issued an Order of Default finding respondent Randy Coal Company ("Randy Coal") 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 Randy Coal a civil penalty of \$98, as proposed by the Secretary. In an undated letter (postmarked September 20, 1990), addressed to Judge Merlin, which was received on September 24, 1990, Randy Coal states that it believed it had been "released" from the violation in question. For the reasons explained below, we deem Randy Coal's submission to be one seeking relief from a final Commission decision, reopen the proceeding, vacate the judge's default order, and remand for further proceedings.

On March 26, 1990, the Secretary filed with the Commission a petition for assessment of civil penalty in this matter, based on a citation issued by the Department of Labor's Mine Safety and Health Administration to Randy Coal at its Mine Hill Strip. When no answer to the penalty proposal was filed with the Commission, Judge Merlin, on May 15, 1990, issued a show cause order directing Randy Coal to file an answer within 30 days or show good reason for the failure to do so. The judge entered an Order of

Default on July 18, 1990, after Randy Coal failed to file an answer. On September 24, 1990, the Commission received a letter from Randy Coal's owner, addressed to Judge Merlin, stating the owner's belief that Randy Coal had been "released" from the violation.

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The judge's jurisdiction over the case terminated when his default order was issued on July 18 1990. 29 C.F.R. 2700.65(c). Under the Mine Act and the Commission's procedural rules, once a 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). Because the judge's decision has become final by operation of law 30 U.S.C. 823(d)(1), we can consider the merits of Randy Coal's submission only if we construe it as a request for relief from a final Commission decision incorporating a petition for discretionary review. See 29 C.F.R. 2700.1(b) (applicability of Federal Rules of Civil Procedure to Commission proceedings); Fed. R. Civ. P.60(b) (relief from judgment or order). Under the circumstances presented, we consider Randy Coal's request in that light. See *J.R. Thompson, Inc.*, 12 FMSHRC 1194, 1195 (June 1990).

In compliance with the standards set forth in Fed. R. Civ. P. 60(b)(1), the Commission has previously afforded a party relief from final orders of the Commission where it appears the party's failure to respond to a judge's order and the party's subsequent default are due to inadvertence or mistake. See *Kelley Trucking Co.*, 8 FMSHRC 1867, 1868 (December 1986); *M.M. Sundt Construction Co.*, 8 FMSHRC 1269, 1270-71 (September 1986). The owner's letter to the judge contains allegations that may reflect confusion and misunderstanding as to the nature and appropriate procedures of this civil penalty proceeding and, additionally, may reflect problems in the legal representation provided Randy Coal by its attorney. We conclude that, in fairness, Randy Coal should be afforded the opportunity to submit its explanations to the judge, who shall determine whether final relief from default is, in fact, warranted.

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For the foregoing reasons, we reopen the proceeding, vacate the judge's default order, and remand this matter for further proceedings. Randy Coal's attention is directed to the requirements that all further pleadings that it wishes to submit in this proceeding must be filed with the Commission and copies of all such documents served on the Secretary of Labor. 29 C.F.R. 2700.5(b) & .7. 1/

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1/ Pursuant to section 113(c) of the Mine Act, we have designated ourselves a panel of three Commissioners to exercise the powers of the Commission in this matter.