

CCASE:
MSHA V. BETHEL FUELS
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
December 4, 1990

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

v. Docket No. WEVA 90-228

BETHEL FUELS INCORPORATED

BEFORE: Backley, Acting Chairman; Doyle, Holen and Nelson, Commissioners

ORDER

BY THE COMMISSION:

In this civil penalty proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1988). Commission Chief Administrative Law Judge Paul Merlin issued an Order of Default on November 6, 1990, finding Bethel Fuels Incorporated ("Bethel") in default for failure to respond to a show cause order. The judge assessed a civil penalty of \$600. For the reasons that follow, we vacate the default order and remand the case for further proceedings.

On November 15, 1990, the Commission received a letter from the Department of Labor's Regional Solicitor's Office in Arlington, Virginia, forwarding an attached letter from Bethel that was received in the Solicitor's office on August 28, 1990. Bethel's letter, dated August 14, 1990, and addressed to the Solicitor's Office in Arlington, Virginia, contains a short and plain statement of the reasons why Bethel disagrees with the civil penalty proposed by the Secretary of Labor in this case.

The judge's jurisdiction over the case terminated when his decision was issued. 29 C.F.R. 2700.65(c). Under the circumstances presented, we deem Bethel's letter, forwarded by the Solicitor's Office, as a timely petition for discretionary review of the judge's default order. E.g.,

Flippy Coal Co., Inc., 12 FMSHRC 391 (March 1990). The petition is granted.

The record discloses that on November 8, 1989, an inspector of the Department of Labor's Mine Safety and Health Administration ("MSHA") issued a citation to Bethel alleging a violation of 30 C.F.R. 75.202(a) for its alleged failure to support adequately or otherwise control mine roof. Upon preliminary notification by MSHA of the civil penalty proposed for the alleged violation, Bethel filed a "Blue Card" request for a hearing before this independent Commission. Counsel for the Secretary certified that on July 18, 1990, the Secretary's penalty proposal was mailed to Bethel. As noted, on August 28, 1990, Bethel served on the Secretary's counsel a document

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constituting an answer to the penalty proposal. The answer, however, was not filed with the Commission. Under the Commission's rules of procedure, the party against whom a penalty is sought must file an answer with the Commission within 30 days after service of the penalty proposal. 29 C.F.R. 2700.5(b) & .28. When no answer to the penalty proposal was filed with the Commission, the judge, on September 7, 1990, issued a show cause order directing Bethel to file an answer within 30 days or show good reason for the failure to do so. When Bethel failed to respond to the show cause order, the judge issued an order of default on November 6, 1990.

Bethel appears to be a small company proceeding without benefit of counsel. In conformance with the standards set forth in Fed. R. Civ. P. 60(b)(1), the Commission has previously afforded such a party relief from default upon a showing of inadvertence, mistake, or excusable neglect. E.g., Amber Coal Co., 11 FMSHRC 131, 132 (February 1989). Here, Bethel may have confused the roles of the Commission and the Department of Labor in this adjudicatory proceeding. In light of these considerations, we conclude that Bethel should have the opportunity to present its position to the judge, who shall determine whether final relief from the default order is warranted. See, e.g., Patriot Coal Company, 9 FMSHRC 382, 383 (March 1987).

Accordingly, we vacate the judge's default order and remand this matter for further proceedings. Bethel is reminded to file with the Commission, and to serve the opposing party, with copies of all its filings and correspondence in this matter. 29 C.F.R. 2700.5(b) & 7.

Richard V. Backley, Acting Chairman

Joyce A. Doyle, Commissioner

Arlene Holen, Commissioner

L. Clair Nelson, Commissioner

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