

CCASE:
MSHA V. BLACKFOOT COAL
DDATE:
19910125
TTEXT:

FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
January 25, 1991

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

v. Docket No. VA 90-44

BLACKFOOT COAL COMPANY

BEFORE: Backley, Acting Chairman; Doyle, Holen, 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 December 18, 1990, Commission Chief Administrative Law Judge Paul Merlin issued an Order of Default finding respondent Blackfoot Coal Company ("Blackfoot") 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 Blackfoot a civil penalty of \$4,273, as proposed by the Secretary. On January 14, 1991, Blackfoot filed a petition for discretionary review ("PDR") of the judge's default order, requesting that the case be reopened. For the reasons explained below, we vacate the judge's default order and remand for further proceedings.

The record discloses that inspectors of the Department of Labor's Mine Safety and Health Administration ("MSHA") issued to Blackfoot a section 104(d) citation, a section 104(d)(1) order, and three section 104(a) citations alleging violations of various safety regulations. Upon preliminary notification by MSHA of the civil penalties proposed for these alleged violations, Blackfoot filed a "Blue Card" request for a hearing before this independent Commission. On August 3, 1990,

counsel for the Secretary filed a proposal for penalty assessments, a copy of which was sent to: "Blackfoot Coal Company, Inc.[,] Attn: Gary A. Horn, President[,] P.O. Box 395[,] Nora, VA 24222." When no answer to the penalty proposal was filed, the judge, on September 17, 1990, issued a show cause order directing Blackfoot to file an answer within 30 days or show good reason for its failure to do so. The order was sent to Horn at the same Nora, VA address. 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 proposal for penalty. 29 C.F.R. 2700.5(b), 2700.28.

In its PDR, Blackfoot states that the Secretary's proposal for penalty assessments and the judge's show cause order were sent to an incorrect former address of Blackfoot, that Horn was never president of Blackfoot, and that Horn was not employed by Blackfoot at the time the proposal and show

~2

cause order were received by him, although he had previously been employed by Blackfoot. Blackfoot asserts that mail incorrectly addressed to it has sometimes been delivered to Horn because the postman thought Horn still worked for Blackfoot. The PDR, filed by Blackfoot's president, Sam Blankenship, states Blackfoot's correct address as P.O. Box 1802, Bristol, VA, 24203.

The PDR raises issues concerning the correct address for service on Blackfoot and whether an authorized individual received service on behalf of Blackfoot. It also appears, according to the PDR, that Blackfoot responded to the Secretary's discovery requests in this proceeding. In light of these considerations, we conclude that the operator should have the opportunity to present its position to the judge, who shall determine whether ultimate relief from default is warranted. See, e.g., *Patriot Coal Co.*, 9 FMSHRC 382, 383 (March 1987).

For the foregoing reasons, Blackfoot's PDR is granted, the judge's default order is vacated, the civil penalty is vacated, and the matter is remanded to the judge for appropriate proceedings. Blackfoot 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.