CCASE:
MSHA V. LLOYD LOGGING
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
May 29, 1991

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

v. Docket No. WEST 91-14-M

LLOYD LOGGING, INC.

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. (1977)("Mine Act"). On April 3, 1991, Commission Chief Administrative Law Judge Paul Merlin issued an Order of Default finding respondent Lloyd Logging, Inc. ("Lloyd") in default for failure to answer the Secretary of Labor's civil penalty proposal and the judge's order to show cause. The judge assessed Lloyd the civil penalty of $1,411 proposed by the Secretary. For the reasons explained below, we vacate the judge's default order and remand for further proceedings.

An inspector of the Department of Labor's Mine Safety and Health Administration ("MSHA") issued Lloyd 14 citations alleging violations of various safety regulations. Upon preliminary notification by MSHA of the civil penalties proposed for these alleged violations, Lloyd filed a "Blue Card" request for a hearing before this independent Commission. On November 15, 1990, counsel for the Secretary filed a proposal for penalty assessment. When no answer to the penalty proposal was filed, Judge Merlin issued an order to show cause on January 17, 1991. No response was received. On April 3, 1991, the judge issued an order finding Lloyd in default for failure to answer the Secretary's civil penalty proposal and his show cause order.

By letter to Judge Merlin, filed April 18, 1991, Lloyd states that it understood the case to have been settled in December 1990. Lloyd attaches a letter from the Secretary, dated November 27, 1990, which proposed settlement of the case for a total of $837 in penalties, striking one citation, and indicating a willingness on the part of the Secretary to prepare the necessary documents for submission to the judge to request settlement approval. Lloyd also attaches a letter dated December 7, 1990, indicating its acceptance of the proposal and requesting the Secretary to proceed with the necessary documents. On May 13, 1991, the Secretary filed

with Judge Merlin a letter stating that a misunderstanding had occurred when the parties reached settlement. The Secretary states her belief that Lloyd had concluded that the Secretary would take care of any necessary filings for settlement approval. The Secretary requests that Lloyd be given an opportunity to proceed in this case and that the order of default be vacated.

The judge's jurisdiction in this proceeding terminated when his default order was issued on April 3, 1991. 29 C.F.R. 2700.65(c). Due to clerical inadvertence, the Commission did not act on Lloyd's April 18 papers within the required statutory period for considering requests for discretionary review and the judge's decision became a final decision of the Commission 40 days after its issuance. 30 U.S.C. 823(d)(1). We conclude that the record supports reopening of this matter, and we proceed to consider the parties' requests for substantive relief.

Relief from a final Commission judgment or order on the basis of inadvertence, mistake, surprise or excusable neglect is available to a party under Fed. R. Civ. P. 60(b)(1) & (6). 29 C.F.R. 2700.1(b) (Federal Rules of Civil Procedure apply, "so far as practicable" and "as appropriate," in absence of applicable Commission rules). See. e.g., Danny Johnson v. Lama Mining Co., 10 FMSHRC 506. 508 (April 1988). Lloyd and the Secretary agree that the parties reached settlement of this matter prior to issuance of the judge's default order, and that Lloyd's default resulted from his belief that the Secretary was to file the necessary settlement approval papers. We conclude that this matter should be remanded to the judge, in order to afford the parties the opportunity to present their settlement to him for his review. See. e.g., Transit Mixed Concrete Company, 13 FMSHRC 175 (February 1991).

For the foregoing reasons, we vacate the judge's default order and remand this matter to the judge for appropriate proceedings.