

CCASE:  
MSHA V. GREFCO  
DDATE:  
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TTEXT:  
January 15, 1992  
SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

v. Docket No. CENT 91-176-M

GREFCO, INC.

BEFORE: Ford, Chairman; Backley, 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 November 18, 1991, Commission Administrative Law Judge John J. Morris entered a decision approving settlement in this case, in which he noted that Grefco, Inc. ("Grefco") had moved to withdraw its contest and to pay in full the civil penalty of \$192 proposed by the Secretary of Labor. For the reasons explained below, we vacate the judge's decision approving settlement and remand for further proceedings.

The record reflects that by letter dated November 1, 1991, Michael Conley, counsel for Grefco, informed the Commission and counsel for the Secretary that Grefco would no longer be contesting the proposed penalty in Grefco, Inc., Docket No. CENT 91-190-M. Counsel for the Secretary subsequently forwarded Mr. Conley's November 1 letter to Judge Morris, along with a cover letter explaining that Grefco was withdrawing its contest of the proposed penalties in the present proceeding, Docket No. CENT 91-176-M. On November 18, 1991, the judge entered a decision approving settlement, noting that Grefco had moved to withdraw its contest in the subject case.

On January 2, 1992, the Commission received a letter from Conley dated December 30, 1991, in which he explains that although Grefco does not contest the proposed penalties in the unrelated case, Grefco, Inc. Docket No. CENT 91-190-M, Grefco continues to contest the proposed civil penalties in the subject case. Conley explains that the judge's decision approving settlement was mistakenly entered due to the misdirection of Conley's November 1 letter by the Secretary's counsel, and requests that this matter be returned to Judge Morris.

The judge's jurisdiction over the case terminated when his decision was issued. 29 C.F.R. • 2700.65(c). Under the Mine Act and the Commission's procedural rules, relief from a judge's decision may be sought by filing a

petition for discretionary review with the Commission within 30 days of the decision. 30 U.S.C. • 823(d); 29 C.F.R. • 2700.70(a). Grefco did not file a timely petition for discretionary review within the 30-day period, nor did the Commission direct review on its own motion within that period. 30 U.S.C. 823(d)(2)(B). Thus, under the Mine Act, the judge's decision became a final decision of the Commission 40 days after its issuance. 30 U.S.C. • 823(d)(1). Under these circumstances, we deem Grefco's December 30 letter to be a request for relief from a final Commission decision incorporating a late-filed petition for discretionary review. See *J.R. Thompson, Inc.*, 12 FMSHRC 1194, 1195-96 (June 1990).

Relief from a final judgment on the basis of mistake, inadvertence, surprise or excusable neglect is available to a movant under Fed. R. Civ. P. 60(b)(1) & (6). See, e.g., *Lloyd Logging, Inc.*, 13 FMSHRC 781, 782 (May 1991). The record in this case suggests that the decision approving settlement may have been entered in error. We conclude that this matter should be remanded to the judge in order to afford Grefco the opportunity to present its position to the judge, who shall determine whether final relief from the decision approving settlement is warranted.

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