CCASE:
MSHA V. UNITED ROCK PRODUCTS
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SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.   Docket No. WEST 91-425-M

UNITED ROCK PRODUCTS CORP.

BEFORE: Ford, Chairman; Backley, Doyle, Holen and Nelson, Commissioners
ORDER
BY THE COMMISSION:
In this proceeding arising under the Federal Mine Safety and Health Act
of 1977, 30 U.S.C. • 801 et seq. (1988)(the "Mine Act"), Commission Chief
Administrative Law Judge Paul Merlin issued an Order of Default on December
18, 1991, finding respondent United Rock Products Corp. ("United") in default
for failure to answer the civil penalty petition filed by the Secretary of
Labor ("Secretary") and the judge's order to show cause. The judge assessed
the civil penalty of $3,670 proposed by the Secretary. For the reasons that
follow, we vacate the default order and remand this case for further
proceedings.
On January 14, 1992, the Commission received a letter dated January 10,
1992, from William Cameron, United's Safety Director, in which Mr. Cameron
requested that Judge Merlin revoke his default order. Cameron explained that
on November 6, 1991, he had mistakenly sent United's answer to the Department
of Labor's Office of Regional Solicitor in San Francisco, California, because
he had directed all previous correspondence to the Secretary's counsel at that
location. Attached to Cameron's January 10 letter was a copy of a letter
dated November 6, 1991, that purports to be United's answer to the Secretary's
civil penalty petition.
The judge's jurisdiction over this case terminated when his decision was
issued on December 18, 1991. 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)(2); 29 C.F.R.
□ 2700.70(a). Here, Cameron's letter, received by the Commission on Januar
14, 1992, seeks relief from the judge's default order. We will treat that
letter as a timely petition for discretionary review of the judge's default
order. See, e.g., Middle States Resources, Inc., 10 FMSHRC 1130 (September
1988).
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The record discloses that United filed a "Blue Card" request for a

hearing in this matter in response to notification by the Secretary of the civil penalties proposed for alleged violations of mandatory safety standards. On July 10, 1991, counsel for the Secretary served a civil penalty petition on United. Having received no answer to the petition, the judge issued an order on October 7, 1991, directing United to file an answer within 30 days or to show cause for its failure to do so. As noted, Cameron asserts that he sent United's answer on November 6, 1991, to the Secretary's counsel at the Solicitor's Office. Under the Commission's rules of procedure, the party against whom the 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) and 2700.28.

It appears that United, proceeding without benefit of counsel, may have confused the roles of the Commission and the Department of Labor in this adjudicatory proceeding. It also appears that United may have attempted to respond to the judge's order to show cause but misdirected that response. Although United has brought the existence of a possible excuse to the attention of the Commission, we are unable to evaluate the merits of United's assertions on the basis of the present record. In light of this, we will afford United the opportunity to present its position to the judge, who shall determine whether relief from default is warranted. See, e.g., Patriot Coal Co., 9 FMSHRC 382, 383 (March 1987).

For the foregoing reasons, we grant United's petition for discretionary review, vacate the judge's default order, and remand this matter to the judge for further proceedings. United is reminded to file all documents with the judge, and to serve counsel for the Secretary with copies of all its filings. 29 C.F.R. • 2700.5(b) and 2700.7.