

CCASE:
MSHA V. RAVENNA GRAVEL
DDATE:
19920514
TTEXT:
May 14, 1992
SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

Docket No. LAKE 90-127-M

RAVENNA GRAVEL

BEFORE: Ford, Chairman; Backley, Doyle, Holen, and Nelson, Commissioners
ORDER

BY THE COMMISSION:

Chief Administrative Law Judge Paul Merlin entered a decision on March 7, 1991, finding Ravenna Gravel ("Ravenna") in default for failing to timely file an answer in this civil penalty proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. • 801 et seq. (1988)(the "Mine Act"). Ravenna failed to file a petition for discretionary review of Judge Merlin's decision within the 30-day period prescribed by the Mine Act, and the Commission did not direct review on its own motion. 30 U.S.C. • 823(d)(2) (A)(i), (B); 29 C.F.R. • 2700.70(a). Accordingly, by operation of the statute, the judge's decision became a final decision of the Commission 40 days after its issuance, i.e., April 16, 1991. 30 U.S.C. • 823(d)(1).

On April 27, 1992, more than one year after the judge's decision became a final order of the Commission, the Commission received a letter dated April 17, 1992, from Sue Ann Glovick, Ravenna's Secretary. In her letter, Ms. Glovick explains that Ravenna paid a civil penalty assessment of \$400 in February 1991. She says that Ravenna received an additional bill for \$400 and, upon inquiry, she learned that two civil penalties had been assessed as a result of the same violative condition. One penalty had been assessed against Ravenna as the mine operator, pursuant to section 110(a) of the Mine Act, 30 U.S.C. • 820(a), and the other had been assessed against Barry Glovick, Ravenna's owner, pursuant to section 110(c), 30 U.S.C. • 820(c). Ravenna paid the penalty assessed against Mr. Glovick, individually, in February 1991, but did not pay the penalty assessed against the company. Ms. Glovick further states that "[a]ccording to federal order 60B," Ravenna has the "right to disagree with [the] fine." She maintains that Ravenna's "neglect is excusable as we were unaware of the double charge."

Under these circumstances, we construe Ravenna's motion to be a request for relief from a final Commission order. 29 C.F.R. • 2700.1(b) (Federal Rules of Civil Procedure apply in absence of applicable Commission rule); Fed.

Rule Civ. P. 60 (Relief from Judgment or Order)("Rule 60"); Wadding v. Tunnelton Mining Co., 8 FMSHRC 1142 (August 1986). A Rule 60(b) motion based

on allegations of "mistake, inadvertence, surprise, or excusable neglect ... shall be made within a reasonable time, and ... not more than one year after the judgment, order, or proceeding was entered or taken." Fed. R. Civ. P. 60(b). Raveena's motion was filed on April 27, 1992 (see 29 C.F.R. § 2700.5(d)), more than one year after the judge's decision became a final order of the Commission. The motion is untimely under Rule 60(b). See generally Wadding, 8 FMSHRC at 1143.

In accordance with the requirements of Rule 60(b), and Commission precedent, we are constrained to deny Raveena's motion.

Ford B. Ford, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

Arlene Holen, Commissioner

L. Clair Nelson, Commissioner