

CCASE:
MSHA V. GATLIFF COAL
DDATE:
19920623
TTEXT:
~1013
June 23, 1992
SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

Docket No. KENT 91-1084

GATLIFF COAL COMPANY, 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). On May 20, 1992, Commission Chief Administrative Law Judge Paul Merlin issued an Order of Default finding respondent Gatliff Coal Company, Inc. ("Gatliff") 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 the civil penalty of \$2,400 proposed by the Secretary. Gatliff filed a petition for discretionary review on June 12, 1992, requesting that this matter be reviewed, on the grounds that it mistakenly believed that it had filed its answer in this proceeding but, in fact, its answer was filed in another Commission proceeding due to clerical errors. We grant the petition for discretionary review of the judge's default order and remand this matter to the judge for further proceedings.

It appears from the record that Gatliff may have an excusable reason for its failure to respond to the judge's show cause order. See Hickory Coal Company, 12 FMSHRC 1201 (June 1990). Under the standards set forth in Fed. R.

Civ. P. 60(b)(1), the Commission has afforded relief from default upon a showing of inadvertence, mistake, or excusable neglect. E.g., Amber Coal Co., 11 FMSHRC 131, 132 (February 1989).

We are unable on the basis of the present record to evaluate the merits of Gatliff's position but, in the interest of justice, we will permit Gatliff the opportunity to present its position to the judge, who shall determine whether final relief from the default order is warranted. See, e.g., Kelley Trucking Co., 8 FMSHRC 1867 (December 1986).

~1014

Accordingly, we vacate the judge's default order and remand this matter for further proceedings.

Ford B. Ford, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

Arlene Holen, Commissioner

L. Clair Nelson, Commissioner