

CCASE:
MSHA V. PAUL SHIREL
DDATE:
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TTEXT:
July 9, 1992
SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

Docket No. KENT 92-73

PAUL SHIREL

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 June 17, 1992, Commission Chief Administrative Law Judge Paul Merlin issued an Order of

Default, finding respondent Paul Shirel ("Shirel") in default for failure to answer the civil penalty proposal of the Secretary of Labor ("Secretary") and the judge's order to show cause. The judge assessed the civil penalty of \$1,000 proposed by the Secretary. For the reasons that follow, we vacate the default order and remand this case for further proceedings.

The judge's jurisdiction over this case terminated when his decision was issued on June 17, 1992. 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 its issuance. 30 U.S.C. • 823(d)(2); 29 C.F.R. • 2700.70(a).

Shirel filed a timely petition, with supporting affidavits, with the Commission on June 29, 1992, seeking relief from the judge's default order. He petitions for review on the grounds that neither he nor his counsel had received the petition for civil penalty or the judge's order to show cause. Shirel further asserts that he had placed the Commission and the Office of the Solicitor of Labor ("Solicitor") on notice of his contest of the proposed civil penalty, and of his representation by counsel, by filing an answer prior to the Secretary's filing of the petition for civil assessment. A certificate of service attached to the answer indicates that it was served by Shirel's counsel on the Commission and on the Solicitor's Office in Arlington, ~1116

Virginia, in early November, prior to the filing of the Secretary's civil penalty petition.

On the basis of the present record, we are unable to evaluate the merits

of Shirel's position. In the interest of justice, we will permit him to present his 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).

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