

CCASE:
MSHA V. MAGMA COPPER, PINTO VALLEY DIV.

DDATE:
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TTEXT:
August 18, 1992
SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

Docket No. WEST 92-98-M

MAGMA COPPER COMPANY,
PINTO VALLEY DIVISION,

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 July 15, 1992, Commission Chief Administrative Law Judge Paul Merlin issued an Order of

Default, finding respondent Magma Copper Company ("Magma") in default for failure to answer either the civil penalty proposal of the Secretary of Labor or the judge's Order to Show Cause. The judge assessed the civil penalty of \$20 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 July 15, 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). Magma filed a timely petition with the Commission on July 30, 1992, seeking relief from the judge's default order.

Magma petitions for review on the grounds that it was proceeding pro se and that it had answered the petition for civil assessment and the judge's show cause order. Magma erroneously sent its pleadings to the Solicitor of Labor's Regional Office in San Francisco rather than the Commission's office in Washington, D.C.

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Under the Commission's rules of procedure, the party against whom a 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) & .28. When no answer to the penalty proposal was filed with the Commission, the judge, on April 9, 1992, issued an order directing Magma to file an answer within 30 days or show

good cause for its failure to do so. When Magma failed to respond to the show cause order, the judge issued an order of default on July 15, 1992.

It appears that Magma may have confused the roles of the Commission and the Department of Labor in this adjudicatory proceeding. On the basis of the present record, we are unable to evaluate the merits of Magma's position. In the interest of justice, we will permit Magma 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). 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