

CCASE:  
MSHA V. D J AND M COAL  
DDATE:  
19920916  
TTEXT:  
September 16, 1992  
SECRETARY OF LABOR  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

v.

Docket No. KENT 91-1109

D J AND M COAL COMPANY, INC.

BEFORE: Ford, Chairman; Backley, Doyle, and Holen, Commissioners(Footnote  
1)

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 August 11, 1992, Commission Chief Administrative Law Judge Paul Merlin issued an Order of

Default, finding respondent D J and M Coal Company, Inc. ("DJ&M") 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. The judge's jurisdiction over this case terminated when his decision was issued. 29 C.F.R.

□ 2700.65(c)

Dexter Music, president of DJ&M, filed a letter with Judge Merlin on August 28, 1992, seeking relief from the judge's default order. Mr. Music requests that "the default order be withdrawn and that I be allowed the opportunity to state my position in this matter." As grounds for relief, Mr. Music states that upon receipt of the "original notice of the proposed assessment from MSHA in June of 1991, I immediately returned the blue card and asked for a hearing." He states that DJ&M did not receive "an answer to this request nor a hearing" and did not receive the judge's Order to Show Cause.

---

1 Commissioner Nelson did not participate in the consideration or disposition of this matter.

~1566

Under the Mine Act and the Commission's procedural rules, relief from a judge's decision may be sought within 30 days of its issuance by filing a petition for discretionary review with the Commission. 30 U.S.C. • 823(d)(2); 29 C.F.R. • 2700.70(a). We deem DJ&M's letter to be a timely filed Petition for Discretionary review. 29 C.F.R. • 2700.70. We are unable to evaluate the merits of DJ&M's position on the basis of the present record. In the interest

of justice, we will permit DJ&M to present its position to the judge, who shall determine whether relief from the default order is warranted.

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