

CCASE:
MSHA V. CARDER, INC.
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TTEXT:

October 29, 1992

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. WEST 92-350-M
	:	
CARDER, INC.	:	

BEFORE: Holen, Chairman; Backley, Doyle, Nelson, Commissioners

ORDER

BY THE COMMISSION:

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"), Commission Chief Administrative Law Judge Paul Merlin issued an Order of Default on September 29, 1992, finding respondent Carder, Inc. ("Carder") in default for failure to answer either the civil penalty petition filed by the Secretary of Labor or the judge's order to show cause. The judge assessed the civil penalty of \$691 proposed by the Secretary. For the reasons that follow, we vacate the default order and remand this case for further proceedings.

On October 6, 1992, the Commission received a letter dated October 2, 1992, in which Carder requests that Judge Merlin rescind his previously issued default order and approve a settlement agreement negotiated between the parties in this case. Carder explains that, at the time the default order was issued, Carder was in settlement negotiation with the Secretary. Carder believed that the Secretary would submit the settlement agreement to the judge and that consequently no further response was required.

The judge's jurisdiction over this case terminated when his default order was issued on September 29, 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 the decision. 30 U.S.C. 823(d)(2); 29 C.F.R. 2700.70(a). Carder's letter to the Commission seeks relief from the judge's default order. We will treat the letter as a timely petition for discretionary review of the judge's default order. See, e.g., Middle States Resources, 10 FMSHRC 1130 (September 1988).

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It appears from the record that Carder may have a plausible explanation for its failure to respond to the judge's show cause order. See e.g., Blue Circle Atlantic, Inc., 11 FMSHRC 2144, 2145 (November 1989). We are unable, however, to evaluate the merits of this explanation on the basis of the present record. We will afford Carder the opportunity to present its position to the judge, who shall determine whether final relief from default is warranted. See, e.g., Blue Circle, 11 FMSHRC at 2145. If the judge determines that final relief from default is appropriate, he shall also take appropriate action with respect to the parties' settlement agreement. 30 U.S.C. 820(k).

Accordingly, we grant Carder's petition for discretionary review, vacate the judge's default order, and remand this matter for proceedings consistent with this order.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner