CCASE:
MSHA V. RAMBLIN COAL
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                              January 14, 1993

SECRETARY OF LABOR,                       :
   MINE SAFETY AND HEALTH                 :
   ADMINISTRATION (MSHA)                  :
                                          :
            v.                            :        Docket Nos. KENT 90-429
                                          :                    KENT 90-430
RAMBLIN COAL COMPANY, INC.                :
                                          :
                                          :

BEFORE:  Holen, Chairman; Backley, Doyle, 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)("the Mine Act").  On July
1, 1991, Administrative Law Judge William Fauver entered an unpublished order
staying further proceedings in this case on various citations for which the
Secretary of Labor had proposed civil penalties in accordance with her
"excessive history" program set forth in Program Policy Letter No. P90-III-4
(May 29, 1990)(the "PPL"), pending this Commission's decision in Hobet Mining
Inc., No. WEVA 91-65.  Hobet involved the validity of the excessive history
program.  On June 22, 1992, the judge issued a decision lifting that stay and
dismissing "the citations charging excessive history violations...."
14 FMSHRC 1025, 1032 (June 1992)(ALJ).  On July 6, 1992, before the judge's
decision became final, the Secretary filed with the judge a motion for
reconsideration, which asserted that the Commission's decision in Drummond
Co., Inc., 14 FMSHRC 661 (May 1992), required remand of the penalty proposals
to the Secretary for recalculation.  The record indicates that the judge did
not rule on the Secretary's motion.

        The judge's jurisdiction terminated when his decision to dismiss the
citations was issued.  29 C.F.R.   2700.65(c).  Although the Secretary filed a
motion for reconsideration with the judge, she did not file a petition for
discretionary review of the decision within the 30-day period prescribed by
the Mine Act.  30 U.S.C.   823(d)(2)(A)(i); see also 29 C.F.R.   2700.70(a).
Nor did the Commission direct review on its own motion.  30 U.S.C.
  823(d)(2)(B).  Thus, the judge's decision became a final decision of th
Commission 40 days after its issuance.  30 U.S.C.   823(d)(1).

        The Secretary's counsel sent to the judge a letter dated December 15,
1992, inquiring as to status of the Secretary's motion for reconsideration.
Under the circumstances, we consider this letter to be a request for relief
from a final Commission decision incorporating by implication a late-filed

petition for discretionary review.  See, e.g., Transit Mixed Concrete Co., 13 FMSHRC 175, 176 (February 1991).  Relief from a final judgment or order of the Commission is available to a party under Fed. R. Civ. P. 60(b)(1) & (6) on the basis of inadvertence, mistake, surprise, excusable neglect, or any other reason justifying relief.  See 29 C.F.R.  2700.1 (Federal Rules of Civil Procedure apply, "so far as practicable" and "as appropriate," in the absence of applicable Commission rules).  See, e.g., Klamath Pacific Corp., 14 FMSHRC 535, 536 (April 1992).

In both Drummond, 14 FMSHRC at 692, and Hobet, 14 FMSHRC 717, 721 (May 1992), the Commission remanded to the Secretary for recalculation civil penalties that had been initially proposed in accordance with the PPL.  It appears that the judge may have erred in failing to remand the subject civil penalties to the Secretary for recalculation.  The judge did not set forth a rationale for his dismissal of "the citations charging excessive history violations."  14 FMSHRC at 1032.  Accordingly, we conclude that this case should be reopened and remanded to the judge for his determination of whether final relief from the decision to dismiss the citations is warranted.  If the citations were dismissed solely because the penalty proposals were made in accordance with the excessive history program set forth in the PPL, the judge is directed to remand the penalty proposals to the Secretary for recalculation in accordance with Drummond.

For the foregoing reasons, we grant the Secretary's petition for discretionary review, reopen this matter, vacate the judge's dismissal of the previously stayed citations, and remand this matter to the judge for further consideration.