

CCASE:  
SOL (MSHA) V. LITTLE ROCK QUARRY  
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February 22, 1993

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket Nos. CENT 92-202 M
	:	CENT 92-204-M
v.	:	CENT 92-205-M
	:	
	:	
LITTLE ROCK QUARRY COMPANY,	:	
INCORPORATED	:	

BEFORE: Holen, Chairman; Backley, Doyle, and 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) ("Mine Act"), Administrative Law Judge Michael A. Lasher, Jr., issued a Decision and Order of Dismissal on January 15, 1993, (the "Dismissal Order") as a result of the Secretary's failure to show good cause why he failed to comply with the judge's Prehearing Order of September 14, 1992.

On January 27, 1993, the Secretary filed with the judge a motion for reconsideration, which was forwarded to the Commission by the judge and received on February 4, 1993. As grounds for reconsideration of the Dismissal Order, the Secretary stated that the parties had "informally settled" the case on January 12, 1993, three days prior to the Dismissal Order.

The judge's jurisdiction over this matter terminated with the issuance of the Dismissal Order. 29 CFR 2700.65(c). The judge therefore could not have entertained a motion for reconsideration. 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 thirty days of the judge's decision. 30 U.S.C 823 (d)(2); 29 CFR 2700.70(a). The Secretary's motion for reconsideration seeks relief from the judge's dismissal of the case. We will, accordingly, treat it as a timely petition for discretionary review of the judge's Dismissal Order. See, e.g., Middle States Resources, 10 FMSHRC 1130 (September 1988).

We are unable to evaluate the merits of the Secretary's pleading on the basis of the present record. Therefore, we will afford the Secretary the

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opportunity to present his position to the judge, who will take such action as he deems appropriate.

Accordingly, we grant the Secretary's petition for discretionary review, vacate the Dismissal Order, and remand the matter for proceedings consistent with this order.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner