

CCASE:
SOL (MSHA) V. BROWN BROTHERS SAND
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February 25, 1993

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH : Docket No. SE 92-84M
ADMINISTRATION (MSHA) :
: V. :
: BROWN BROTHERS SAND COMPANY :

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 December 11, 1992, Administrative Law Judge David F. Barbour issued a decision finding two violations of the Mine Act. On February 1, 1993, the Commission received a letter from Brown Brothers Sand Company ("Brown") challenging the judge's findings of violations. The Mine Act, 30 U.S.C. 823 (d)(2)(A)(i), and Commission Procedural Rule 70, 29 C.F.R. 2700.70, require that petitions for discretionary review be filed within 30 days after issuance of the judge's decision, in this instance by January 11, 1993.^{1/} The letter from Brown states that the writer, Carl Brown, was aware of the 30-day time limit to appeal but that he "deliberately waited past this deadline."

The Commission has entertained late-filed petitions for discretionary review in appropriate circumstances. Such relief is evaluated on a case-by-case basis. We have looked to the Federal Rules of Civil Procedure for guidance in such matters. 29 C.F.R. 2700.1(b). Federal Rule 60(b)(1) provides relief from a final judgment on the basis of inadvertence, mistake, surprise, or excusable neglect. See M.M. Sundt Constr. Co., 8 FMSHRC 1269, 1270-71 (September 1986); Kelley Trucking Company, 8 FMSHRC 1867 (December 1986); A.H. Smith Stone Company, 11 FMSHRC 796 (May 1989).

1/ If the last day for filing falls on a Saturday, Sunday or holiday, the filing date is extended to the following non-holiday weekday. See Gravely v. Ranger Fuel Corp., 4 FMSHRC 799 (April 1984).

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Brown's admittedly deliberate late filing does not meet the criteria of Rule 60(b)(1). Accordingly, we deny Brown's petition.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner