

CCASE:
SOL (MSHA) V. M.A.G., INC
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April 26, 1993

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket Nos. WEVA 92-1021
	:	WEVA 92-1046
M.A.G., INC.	:	WEVA 92-1047
	:	WEVA 92-1048
	:	WEVA 92-1072
	:	WEVA 92-1073

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

ORDER

BY THE COMMISSION:

In these civil penalty proceedings 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 six Orders of Default on March 17, 1993, finding respondent M.A.G., Inc. ("M.A.G.") in default for failing to answer the civil penalty proposal of the Secretary of Labor ("Secretary") and the judge's December 10, 1992, Order to Show Cause. The judge assessed civil penalties of \$14,370 as proposed by the Secretary. For the reasons that follow, we vacate the default orders and remand the cases for further proceedings.

The judge's jurisdiction over these cases terminated when his decision was issued on March 17, 1993. 29 C.F.R. 2700.65(c). On April 15, 1993, Michael Stanley, President of M.A.G., filed a letter with the Commission appealing the judge's default orders. Mr. Stanley requests that the default orders be withdrawn and that M.A.G. be given an opportunity to address the penalty assessments.

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). We will treat M.A.G.'s letter as a timely filed petition for discretionary review of the decision. See e.g., Middle States Resources, Inc., 10 FMSHRC 1130 (September 1988). On the basis of the present record, we are unable to evaluate the merits of M.A.G.'s position. In the interest of justice, we will permit M.A.G. to present its position to the judge, who shall determine whether final relief from the default orders is warranted.

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Accordingly, we vacate the judge's default orders and remand these matters for further proceedings.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner