

CCASE:  
SOL (MSHA) V. GLEN BURWICK  
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May 21, 1993

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. CENT 92-341-M
	:	
GLEN BURWICK,	:	
Employed by Burwick	:	
Construction Co.	:	
	:	

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)("Mine Act"). On April 22, 1993, Chief Administrative Law Judge Paul Merlin issued an Order of Default, finding respondent Glen Burwick, an employee of Burwick Construction Co., in default for failing to answer the notice of proposed civil penalty filed by the Secretary of Labor or the judge's February 9, 1993, Order to Show Cause. The judge assessed the civil penalty of \$400 proposed by the Secretary. For the reasons that follow, we vacate the default order and remand this case for further proceedings.

The Commission has received a letter from Ms. Tanya Burwick dated April 27, 1993, stating that on February 22, 1993, Glen and Therell Burwick responded to the Proposal, showing their opposition to the charges brought against them. The February 22 letter contained no docket numbers and was filed only in the official record in Therell Burwick, emp. by Burwick Construction Co., Docket No. CENT 92-340-M, a related case.

The judge's jurisdiction over this case terminated when his decision was issued on April 22, 1993. 29 C.F.R. 2700.69(b). 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 its issuance. 30 U.S.C. 823(d)(2); 29 C.F.R. 2700.70(a). We deem the April 27 letter to be a timely filed Petition for Discretionary Review, which we grant. 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 the respondent's position. In the interest of justice, we remand this matter to the judge, who shall determine whether a default order is warranted.

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For the reasons set forth above, we vacate the judge's default order and remand this matter for further proceedings.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner