

CCASE:
SOL (MSHA) V. DAVIS TRUCKING
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May 27, 1993

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. LAKE 92-421-M
	:	
DAVIS TRUCKING COMPANY, INC.	:	

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

ORDER

BY: Holen, Chairman; Backley, and Doyle, Commissioners

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 23, 1993, Chief Administrative Law Judge Paul Merlin issued an Order of Default to Davis Trucking Co. ("Davis") for failing to answer the notice of proposed civil penalty filed by the Secretary of Labor or the judge's February 24, 1993, Order to Show Cause. The judge assessed the civil penalty of \$2,000 proposed by the Secretary. For the reasons that follow, we vacate the default order and remand this case for further proceedings.

On April 30, 1993, the Commission received from Davis' counsel a motion to vacate and set aside the default order. Davis' counsel explained that Davis had been negotiating a settlement in this matter, and did not understand that a default judgment would be entered against it during ongoing settlement negotiations.

The judge's jurisdiction over this case terminated when his decision was issued on April 23, 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 after its issuance. 30 U.S.C. 823(d)(2); 29 C.F.R. 2700.70(a). We deem Davis' motion 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 Davis' position. In the interest of justice, we remand this matter to the judge, who shall determine whether default is warranted. See Hickory Coal Co., 12 FMSHRC 1201, 1202 (June 1990).

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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