

CCASE:
SOL (MSHA) V. A - 1 GRIT COMPANY
DDATE:
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May 27, 1993

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
:
v. : Docket No. WEST 92-527-M
:
A-1 GRIT COMPANY :
:
:

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 22, 1993, Chief Administrative Law Judge Paul Merlin issued an Order of Default to A-1 Grit Company ("A-1") for failing to answer the notice of proposed civil penalty filed by the Secretary of Labor or the judge's October 27, 1992, Order to Show Cause. The judge assessed the civil penalty of \$942 proposed by the Secretary. For the reasons that follow, we vacate the default order and remand this case for further proceedings.

On May 13, 1993, the Commission received a letter from A-1 asserting that it had timely responded to the judge's show cause order. A-1 attached to this letter a copy of a U.S. Postal Service return receipt purporting to show that it filed a response. We note, however, that the order to show cause was issued on October 27, 1992, not on November 27, 1992, as A-1 asserts. A-1 requests that the order of default be vacated.

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 A-1's 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 A-1's 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