

CCASE:
SOL (MSHA) V. L.M. KARNES (J.H. SHEARS & SONS)
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June 22, 1993

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. CENT 92-333-M
	:	
L.M. KARNES, Employed by J.H. SHEARS	:	
SONS, INC.	:	

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

ORDER

BY: Holen, Chairman; Backley, Doyle, and Nelson, 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 L. M. Karnes for failing to answer the notice of proposed civil penalty filed by the Secretary of Labor or the judge's February 11, 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.

On May 14, 1993, the Commission received a letter from Karnes asserting that he had not received the Order to Show Cause. Karnes requests that the Order of Default be vacated.

The judge's jurisdiction over this case terminated when his decision was issued on April 23, 1993. 29 C.F.R. 2700.69(b). This decision has become final by operation of law, 30 U.S.C. 823(d)(1). We can consider the merits of Karnes' submission if we construe it as a request for relief from a final Commission decision incorporating a petition for discretionary review. See 29 C.F.R. 2700.1(b) (applicability of Federal Rules of Civil Procedure to Commission proceedings); Fed. R. Civ. P. 60(b)(relief from judgment or order). We reopen this proceeding to consider Karnes' letter as a timely filed Petition for Discretionary Review, which we grant.

On the basis of the present record, we are unable to evaluate the merits of Karnes' 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, 1201 (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

L. Clair Nelson, Commissioner